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U.S.-GERMAN AGREEMENT ON THE TRANSFER
TO GERMAN CONTROL OF NAZI PARTY
RECORDS IN THE BERLIN DOCUMENT CENTER

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G31/8
HARING

BEFORE THE

SUBCOMMITTEE ON
INTERNATIONAL SECURITY, INTERNATIONAL
ORGANIZATIONS AND HUMAN RIGHTS

OF THE

COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

APRIL 28, 1994

Printed for the use of the Committee on Foreign Affairs



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U.S.-GERMAN AGREEMENT ON THE TRANSFER TO GERMAN CONTROL OF NAZI PARTY RECORDS IN BERLIN DOCUMENT CENTER

THURSDAY, APRIL 28, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL SECURITY,
INTERNATIONAL ORGANIZATIONS AND HUMAN RIGHTS,
Washington, DC.

The subcommittee met, pursuant to call, at 10:02 a.m., in room 2200, Rayburn House Office Building, Hon. Tom Lantos (chairman of the Subcommittee on International Security, International Organizations and Human Rights) presiding.

Mr. LANTOS. The Subcommittee on International Security, International Organizations and Human Rights will be in order.

In little more than a month, we will mark the 50th anniversary of the Allied landing on Normandy—D-Day, the military operation which was the key to the Allied victory in the Second World War. In a few months, President Clinton and leaders of other Allied nations who participated in the tremendous military victory, including a delegation from the Congress of the United States, of which I am privileged to be a member, will participate in honoring the thousands of American and other soldiers who gave their lives to end the brutal tyranny of Adolf Hitler and his Nazi regime.

It was just 10 months after D-Day, in April of 1945, that troops of the U.S. Seventh Army after sweeping through the south of Germany discovered some 400 tons of Nazi party records at a paper mill near Munich and in a salt mine near Berchtesgaden. These were the personnel records of the Nazi party and its affiliated organizations, including the SS. These documents were used in the prosecution of Nazi war criminals at Nuremberg, and these documents continue to be used to this very day in unmasking and bringing to justice those vicious, sadistic Nazi leaders who perpetrated the darkest crimes against humanity.

Since October of 1953, this massive collection of Nazi party documents has been under the control of the U.S. Department of State, and they have been housed at a facility in Berlin known as the Berlin Document Center. On July 1 of this year—unless we modify that date—under terms of an agreement negotiated between representatives of the Government of the Federal Republic of Germany and the United States, these documents will be turned over to the German Government.

As we consider this transfer, it is important to understand and keep in mind the kinds of documents that we are considering which have been kept in the Berlin Document Center under American control for nearly half a century. This collection contains over 10 million membership cards created and maintained by the Nazi party headquarters in Munich; personnel records of over 60,000 SS members and officials, including promotions that were made following the destruction of Jewish ghettos; files of the SS Central Office for Race and Settlement of requests for permission to marry; some 236,000 medical records to prove—and I quote—"racial purity;" transfers of individuals to command or serve at concentration camps; results of investigations of whether a prospective bride of an SS officer had any Jewish ancestry; records of medical experiments in the concentration camps; and so on. Even this quick summary of the kind of records contained in the Berlin Document Center indicates their extreme importance for legal proceedings against Nazi officials, some of whom are still alive, and their vital significance for our historic and scholarly understanding of what actually happened during the dark period of Nazi atrocities.

A number of questions have been raised with regard to this U.S.-German agreement to turn over possession of the Nazi party archive at the Berlin Document Center to the Government of Germany. Under terms of that agreement, the German Government is paying to produce two microfilm copies of this entire collection of Nazi party documents. One of those copies will be in the hands of the U.S. Government in the care of our National Archives. This entire collection consists of some 40,000 reels of microfilm.

Today's hearing of the Subcommittee on International Security, International Organizations and Human Rights will explore questions that have come up in connection with this proposed transfer of the Berlin Document Center. Our principal concern is to assure continued, uninterrupted, free and open access to these documents to all individuals who have a legitimate interest in the documents, particularly to assure continued free access during the transition period until the reader's copy of these microfilms is fully open and available to the public in our National Archives.

A number of other questions have also been raised about the possibility of restrictions or limitations on future access to these Nazi party records in Germany once the German Government assumes control of the Berlin Document Center; the possible limitations upon access to the microfilm copies of these documents in U.S. Government control at the National Archives; and official access to original documents needed by U.S. Government agencies for legal proceedings, such as the Office of Special Investigations at the Department of Justice and the Bureau of Consular Affairs at the Department of State.

It is important that we understand what access to these documents has been available until now. Under U.S. administration, access to materials in the Berlin Document Center was very generous. While the Berlin Document Center primarily provides information for agencies of the U.S. Government and governments of other friendly nations, Berlin Document Center records have also been open to private researchers, to historians and to journalists. Citizens of the United States and Canada have had virtually unlimited

access to these records. According to one of our witnesses today, Professor Henry Friedlander, citizens of other countries have had access under agreements between the United States and their respective governments. This has sometimes meant open and direct access for researchers, at other times access has been available only to researchers cleared by their government. Sometimes it has meant access by mail through the foreign ministry of a country. For German citizens, access to the BDC is determined by the German Federal Archives under the authority of the German Ministry of the Interior, and this procedure has excluded many scholars and imposed restrictions on others.

Before concluding, I want to emphasize that this hearing today is held in response to extremely serious concerns that have been raised about access to these Nazi party archives by Members of Congress, including those here today, as well many others of our colleagues who have spoken with me and other members of my subcommittee. There have also been countless letters to Members of Congress from constituents seriously concerned about this issue. I doubt that there is a single Member of Congress who has not received some personal letters from constituents raising this issue during recent weeks. The officials of the U.S. Government who are here testifying before us today and officials of the Government of the Federal Republic of Germany, who are closely aware of this hearing today, must know that this question of access to these documents is one of great and intense interest to Members of the U.S. Congress.

I would like to take just a moment to commend Dr. David Marwell, the director of the Berlin Document Center, who has been in charge of this facility for the past 6 years. All those who have had dealings with the BDC—government agencies, as well as private individuals and scholars—are unanimous in their accolades for his excellent leadership in assuring open access to the documents and in preparing the facility for the transition to German control.

We are fortunate today to have a distinguished panel of government witnesses who will speak to us from a number of different institutional vantage points, two prominent historians and scholars who can speak about the academic and research issues with which we are concerned today, and the leaders of private organizations who have a well-known expressed interest in the issues which we will address today. I want to welcome all of our witnesses today.

Before turning to my distinguished colleague and good friend from Pennsylvania, I want to express my deep appreciation to Andrea Nelson and Dr. Robert King of the subcommittee staff, and to Mike Ennis of the Republican subcommittee staff for their very effective and indispensable work in preparing this hearing.

Perhaps the member who has exhibited the greatest personal interest in this matter is my distinguished colleague and very dear friend from Pennsylvania, who in the short time that she has been with us has made a mark, not only on the Congress of the United States, but on the budget of the United States running for several years to come. So, it gives me special pleasure to introduce Congresswoman Margorie Margolies-Mezvinsky for whatever statement she may care to make.

Ms. MARGOLIES-MEZVINSKY. Thank you, Mr. Chairman. Thank you for giving me the opportunity to be with the subcommittee at this hearing.

The situation regarding the transfer of the Berlin Document Center first came to my attention when I read the March 14, 1994 edition of New Yorker Magazine, which I am sure you have seen. In that edition, the acclaimed historian, Gerald Posner, detailed several serious concerns regarding the history of the negotiations of this transfer, and my staff and I immediately began contacting individuals who were mentioned in the article.

Within weeks, we had contacted David Marwell, director of the Berlin Document Center; Elan Steinberg and Israel Singer of the World Jewish Congress; Gerald Posner; Michael Berenbaum of the U.S. Holocaust Memorial Museum; Robert Tatge of the State Department; Robert Wolfe of the National Archives; representatives from the Anti-Defamation League and dozens of other people.

Through our investigation and the leadership of Chairman Lantos, we have come to this point today where a congressional hearing is necessary to answer a number of questions about this transfer.

Throughout our dealings with the American Government officials on this matter, it has become clear that there are those in our Government—not in the German Government, but in the U.S. Government—who simply do not comprehend the legacy of the Holocaust. It is possible that these hearings could have been avoided. It is possible that this entire controversy could have been avoided, I feel, if those in charge had been a little more sensitive to the legitimate fears and concerns of those members of the American and world community for whom the Holocaust is not merely a historic fact, but a horrific memory.

Throughout the discussions, my staff heard the comments of men who—no question about it—cared about America and cared about our relationship with Germany. And though there were several differing viewpoints on how to best preserve the integrity of the Berlin Document Center files, I do not question anyone's commitment to these files.

However, statements made by several government officials with jurisdiction in this matter, statements made in private, such as "just because the Germans lost the war does not mean they gave up their right to privacy" about membership in the Nazi party, or an argument that it was important to speed up the date of this transfer because the German's were "footing the bill." These statements really did disturb me.

There are practical realities, day-to-day diplomatic situations, and about these, I do not want to appear naive. But the German Government "footing the bill" for the preservation of these documents does not mean a whole lot to someone whose entire family was slaughtered during the darkest period of this century. The Germans' "right to privacy" must be carefully weighed against the need to punish those Nazis who inhumanely allowed the murder of 6 million Jews and nearly 6 million others.

So while we listen to the statements made here today, I would ask those individuals who could perhaps be a bit more sensitive to the terror of the Holocaust not only testify, but listen.

Thank you, Mr. Chairman.¹

Mr. LANTOS. Thank you very much, Congresswoman.

Our first panel consists of Ms. Mary Ann Peters, Deputy Assistant Secretary for European and Canadian Affairs at the Department of State; Mr. Mark Richard, Deputy Assistant Attorney General of the Criminal Division, who is accompanied by Mr. Eli Rosenbaum, Acting Director of Office of Special Investigations at the Department of Justice; and Dr. Lewis Bellardo, Acting Deputy Assistant Archivist, National Archives and Records Administration.

We are very pleased to have all three of you. Your prepared statements will be entered in the record in total. We would appreciate it if you could summarize your prepared statements so we can get on to questions.

We will begin with you, Ms. Peters.

STATEMENT OF MARY ANN PETERS, DEPUTY ASSISTANT SECRETARY OF STATE FOR EUROPEAN AND CANADIAN AFFAIRS, DEPARTMENT OF STATE

Ms. PETERS. Thank you, Mr. Chairman, Ms. Margolies-Mezvinsky. I am Mary Ann Peters, Deputy Assistant Secretary of State in the Bureau of European and Canadian Affairs, as the Chairman said. I am pleased to present the views of the Department of State on the turnover to Germany of Nazi records contained in the Berlin Document Center, or BDC.

I know the committee is well acquainted with the history and purposes of the BDC, and thus I will focus my oral statement on the provisions of our turnover agreement. With your concurrence, Mr. Chairman, I ask that the text of the agreement, itself, and the accompanying notes verbale, a fact sheet and a chronology also be entered in the record along with my statement.

Mr. LANTOS. Without objection, those will be entered in the record.

Ms. PETERS. Thank you, sir.

The agreement signed and in effect since last October is a good one for the U.S. Government and for private citizens who have an interest in the Nazi period of German's history. Records which have been available only for official purposes or for researchers traveling to Berlin will soon be available in this country.

During the period when our National Archives is preparing a copy of the microfilm records for use here, we will enjoy full and expeditious access to originals for official purposes. Also during that period, we expect German archival authorities to provide private scholarly access at the level available during U.S. stewardship of the documents, and we are committed to use the liaison function set out in our agreement to ensure that access.

U.S. policy since the early postwar period has favored the return to Germany of captured records. Talks with Germany on terms for the transfer of the BDC's holdings took place as early as 1967. In those talks, and throughout our exchanges on the subject, the USG insisted on appropriate access for our official purposes, as well as for private research—and I might add here that the talks were broken off in 1968 because of our inability to obtain German agree-

¹Mrs. Margolies-Mezvinsky's prepared statement appears in the appendix.

ment to that stipulation. This access was to be achieved principally by producing microfilm copies of all BDC holdings for use in the United States.

Our specific objectives in the 1992–1993 turnover negotiations were to ensure full and expeditious U.S. Government access to documents in the BDC during the transition period—that is, when microfilm copies of the documents at the Archives here might not yet be fully accessible; prompt access to the originals for authentication purposes in legal and judicial actions, or in cases where microfilm copies might not be legible; and clear rules for public access to BDC records, both the originals in Germany and the microfilm copies in the United States. The agreement of October, 1993 achieved these objectives.

Germany has spent over \$10 million to produce 55 million exposures of microfilm, one set of which we will receive prior to turning over the originals. I believe about 53½ million of those exposures have been made and the remainder will be completed by the end of next month—that is, before the turnover date of July 1.

U.S. Government's access to the originals is ensured in perpetuity. And until the microfilm is fully available here for public use, a U.S. ombudsman will represent American interests in access to original documents, including for private research.

After years of negotiation, Ambassador Holbrooke—

Mr. LANTOS. Could you tell me what specifically you mean by a “U.S. ombudsman?” This will presumably be an interlocutor on behalf of private organizations or individuals who, in cases of problems or difficulties, will attempt to advocate the access position—free access position, but this ombudsman will clearly have no legal right or authority to mandate the making available of materials. Am I correct in my understanding?

Ms. PETERS. We anticipate, Mr. Chairman, that what I refer to as an ombudsman, also known in the agreement as the liaison officer, will, in fact, be able to assure access, because Article IV of the agreement provides for this liaison officer. Ambassador Holbrooke has nominated our principal officer at our mission in Berlin to fulfill this function; that is a high-ranking, high-profile senior officer. We have every expectation that he will be effective.

Mr. LANTOS. I do not question that our principal officer in Berlin will be designated by Ambassador Holbrooke. My question is a legal question. If I, as an individual, wish to obtain access to some of these documents, and for whatever reasons I am denied that, this ombudsman will have no authority, no authority to mandate the making of the documents available to me. Am I correct?

Ms. PETERS. No, sir. We expect that the—that—

Mr. LANTOS. It is not a question of expectation. It is a question of an agreement. If—do we have an agreement with the Germans, Ms. Peters, that if the ombudsman intervenes, his view prevails? Or is his role one of an—of merely attempting to resolve a dispute?

Ms. PETERS. The—our view will be that his view will prevail, and Ambassador Holbrooke—

Mr. LANTOS. Is that the German view?

Ms. PETERS. I do not know under specific circumstances what the German view would be. But Article IV—

Mr. LANTOS. But, is the German view not the critical view, because they will have possession of these documents?

Ms. PETERS. Mr. Chairman, we expect the Germans to continue to provide access to scholars on the same liberal basis that they have since 1988 when the Federal archive law went into effect for German access. During that time, hundreds and hundreds of requests have been approved. Only one, to our knowledge, has been denied.

Mr. LANTOS. By the Germans?

Ms. PETERS. By the Germans for scholarly research, and——

Mr. LANTOS. On what grounds was that one denial made?

Ms. PETERS. I believe it was because the information requested was about the father of two politicians, and the Germans deemed it inappropriate to attack two politicians on the basis of their father's association with the party.

But may I also point out that it will become much more difficult for the German Government to refuse access to these documents when the—when the National Archives will have a copy and it will be available under our laws, which do not protect the privacy of Nazi members.

Mr. LANTOS. But we will not have the originals?

Ms. PETERS. No, sir, but we have copies that I believe are very good.

Mr. LANTOS. We have good copies, but for many legal purposes, access to the originals is required. Is that not true?

Ms. PETERS. Yes, sir. And for legal purposes and official purposes, our access is ironclad under this agreement.

Mr. LANTOS. Well, I—I would like you to continue. But, I think it is extremely important that our Government does not misrepresent to the Congress our ability to obtain documents, because the presence of an ombudsman clearly is no guarantee of the availability of original documents. Are we in agreement on that, Ms. Peters?

Ms. PETERS. Of course, Mr. Chairman.

Mr. LANTOS. Please proceed.

Ms. PETERS. I would not want to leave that impression. But, I would like to add that our view is that any reasonable interpretation, and certainly our interpretation, of the agreement and the accompanying notes verbale is that the Germans have stated that they will—that they will accede to the request of the liaison officer.

If I may continue, I would like to add that Ambassador Holbrooke, when he arrived in Bonn representing the new administration, came at the end of the negotiations and wanted to be absolutely certain that the agreement fully met all U.S. interest in access to the documents in the BDC. And, therefore, he shared the text of the agreement with American scholars on Germany and the Holocaust, who judged that it provided adequate access for research purposes at all stages. We would never have concluded this agreement in question without guaranteeing the continuation of American access to those materials to the same degree that has prevailed in the four decades of our own stewardship.

In some respects, access will be easier. First of all, the copy would be located here. Third country nationals will no longer have to apply directly to the German Federal Archives for access to BDC holdings—they will—I am sorry—will be able to apply directly to

the Federal Archive, rather than having to go through their own governments first.

The German Archive has been processing private German applications for 6 years now since their new archive law went into effect in 1988. The American director of the BDC, Dr. Marwell, receives dozens of such requests weekly. We asked him earlier to take a sample from his desk, and he noted that the German Archive had approved and forwarded applications to him within 1 week of receipt. And as I noted earlier, they have approved hundreds of requests and denied from—for scholarly research, have denied, to our knowledge, only one.

But if private researchers of any nationality encounter difficulties with these procedures, and if their work is in the U.S. interest, broadly defined, a liaison officer in our embassy, whom I referred to earlier as an ombudsman, will be available to pursue that request in the strongest terms with the German Government.

But, I also wish to emphasize, beginning late this year—

Mr. LANTOS. You know—

Ms. PETERS. Yes.

Mr. LANTOS [continuing]. I am glad you mentioned this again, but let me tell you why I find this assurance on the part of the Department so hollow. I have personally intervened on behalf of an American citizen in connection with a very serious matter with our Ambassador and with the German Government. Our Ambassador has raised this issue with the German Government repeatedly, and to no avail. So, it is very difficult for me to accept the notion that our principal officer in Berlin will raise an issue as a guarantee of compliance. I mean, these are two entirely different things. These are like somebody saying, "I am going to look into it," and that is all it is. It has no—no guarantee attached to it of any kind.

Now, if that is the agreement, then we, in Congress, will have to look at the agreement in that light. But, I do not think—I do not think repeated emphasis of the availability of a diplomatic officer in Berlin gives us any shred of assurance that the substantive issue will be resolved in terms of free access. I mean, we will approach this ombudsman, whoever will have a problem with the German Archives, because there is a problem. And the only thing this individual can do, at a lower level than ambassador Holbrooke has done in other instances, is to make a representation, and that representation will either be honored or rebuffed.

And there is zero—zero in your testimony so far which gives me a—which would give me a sense of confidence that this so-called ombudsman can achieve anything, except, you know, in terms of his potential powers of persuasion, which may or may not be adequate.

Ms. PETERS. Mr. Chairman, I am, of course, familiar with the case you referred to and it has been raised, not only by the Ambassador, but by the President, himself. And we disagree, frankly, with the German view on this strongly and we will continue to press it. I would say, with regard to that case, it is not over. But as far—but—

Mr. LANTOS. But, it is sort of indicative—and I know you are familiar with the case, but it is sort of indicative that given the complex and enormously good relations between our two governments,

the issue being raised by the President of the United States, as you state, has still not given us the right results. Well, if the President of the United States cannot get a result in what is admittedly a tiny, tiny, tiny, matter in the totality of our relations with Germany, your comment only makes me more skeptical of the ability of our principal diplomatic officer in Berlin to get any results.

I mean, we have to treat this in an adult fashion. This is not a world without conflict; not everybody approaches every subject in a constructive fashion. Clearly, when people within our own government have made comments that the right to privacy of Nazi party membership needs to be very carefully considered, my answer to that is: "Hell no, I want to know who was a member of the Nazi party for a whole lot of reasons, and he gave up his right to privacy the moment he joined the Nazi party."

So, I think it is important to realize we are not dealing here with a real estate transaction in the Midwest. We are dealing with a regime that massacred, gas, killed millions of people, and the regime with which we were engaged in a very serious world war at a cost of vast numbers of American dead, whom we are going to honor on June 6 on the Normandy beaches.

So, this is not a commercial dispute where, you know, they have their point of view and we have our point of view. This was a Nazi fascist regime, which we defeated at an enormous cost in blood to the American people. And we are now contemplating the transfer of all of the documents of this hideous Nazi party to somebody else's jurisdiction. And the concern that I have, and many of my colleagues have, is: are we giving up any shred of access to any of the documents at any time during the transition period or beyond it?

And, clearly, you know, you are correct in saying the U.S. Government will have access to these documents in perpetuity. But the U.S. Government is not the only entity which may choose to have access to these documents, and I want to be absolutely sure that anybody who may care to have access has—access.

Ms. PETERS. So do we within the rules governing access at the moment and archival practice. And I would merely point out that the agreement—and it is something that we expect the Germans to respect because they have signed an agreement—states that the liaison officer will have access to these documents and it states that in—when such access is in the U.S. interest, we—it is our view that that means that the Germans have signed a binding international document that will grant us the ability to assure access for official purposes and for purposes consistent with the U.S. interest, which clearly means purposes including research and scholarly—and scholarly purposes.

Mr. LANTOS. But, you see, the U.S. interests are more complex than research and scholarly interests. The U.S. interest—if I were Secretary of State, I might conclude that not ruffling our relations with Germany is more in the U.S. national interest than obtaining access for an individual scholar. So the notion that since, clearly, the Department of State will sit in judgment of what the U.S. national interest is, that may ride roughshod over individual concerns in this matter. That is really the issue.

You see, it is not sufficient for purposes of guaranteeing the access that currently is available under U.S. control to say that the U.S. national interest will determine whether the ombudsman will try to use whatever contacts he has. I mean, suppose that the German desk at the State Department says, "We have other fish to fry." We run into this on every single issue that we deal with, as the current MFN debate with respect to China so clearly demonstrates. I mean, what is the U.S. national interest? Is it the corporate interest to sell to China or is it the human rights interest of seeing to it that people are not tortured?

Ms. PETERS. That, sir, is why we have insisted on microfilm that will be available within—at least the most interesting portions of it will be available—and, of course, Dr. Bellardo will speak to that—within months, perhaps by the end of the year. That not only means that it will not be necessary in the vast majority of cases to go to Berlin at all, to go to the trouble and expense of—

Mr. LANTOS. Let me stop you there, by the end of the year. This agreement is scheduled to go into effect when?

Ms. PETERS. On July 1, sir. We will have a full—

Mr. LANTOS. And the end of the year is December 31.

Ms. PETERS. And that is why the liaison officer is available for whatever might come up during those few months. But, I think that the fact that the German Government and the archivists who have been interpreting their privacy law quite liberally, and who have been using their discretion to override privacy considerations in cases of scholarly research affecting persons in the public eye, living or dead, will—they will further be influenced by the knowledge that there is no sense in refusing access to information that the general public will have access to in a matter of weeks or months, depending on the series involved. In other words, it is—it seems to us that our copy of the microfilm provides yet another reason, in addition to their own practice, for the Germans to respect this agreement.

Mr. LANTOS. But, that will not be available in total, as you have testified a moment ago, until the end of the year.

Ms. PETERS. That—may I defer to Dr. Bellardo in explaining how the National Archives will make its copy available.

Mr. LANTOS. Before I give the floor to Dr. Bellardo, may I welcome to the hearing the ranking Republican member of the Foreign Affairs Committee who has been one of the leaders in the Congress on this whole issue and who I believe would like to make an opening statement.

Mr. GILMAN. Thank you, Mr. Chairman, and I want to welcome our panelists and also welcome Representative Margolies-Mezvinsky joining our panel today. I want to thank you, Mr. Chairman, for arranging this hearing on a very important topic. A number of us have heard quite critically about this proposed transfer from a number of our constituents, and I do want to welcome the distinguished private visitors we have with us this morning. Their pursuit of justice is certainly well documented, and their diligent, tireless efforts against burgeoning neo-Nazism, revisionism and anti-Semitism are highly commendable.

In the pursuit of justice, and because the Berlin Document Center is an expansive resource for scholars, for historians, and for the

seekers of justice and truth, this committee is committed to ensure that open access to the Berlin Document Center is going to be maintained as the United States prepares to hand over administration of the Center.

Mr. Chairman, I understand there are a number of concerns about the proposed transfer, which this subcommittee looks forward to more fully discussing with the witnesses this morning. I do want to thank the witnesses for sharing their expertise and perspective with us. Let us hope that this morning's hearing results in a clarification of the details and ramifications of the proposed transfer.

Mr. Chairman, with your permission, I would like to just address two or three questions to Ms. Peters, since I have to go on to another hearing. Thank you, Mr. Chairman.

Ms. Peters, what was magic about the date that was arrived at in this agreement? Why is there such a short-term limitation on all of this?

Ms. PETERS. Well, it had to do with the amount of time that it would take to microfilm the collection.

Mr. GILMAN. But, you are going ahead with the agreement prior to the completion of the microfilming. That seems a bit inconsistent.

Ms. PETERS. Well, actually, although I am not a technical expert, I believe the microfilming will be completed. It is merely that—

Mr. GILMAN. Will be completed by what date?

Ms. PETERS. Oh, certainly by July 1, the turnover date. What will not be completed will be the copy that our Archives has to make of that. And that—when we negotiated this over the course of—well, starting in 1990, this latest round—although the negotiations actually began in 1967—it was impossible to foresee exactly how long that would take. But, certainly, the condition that—the condition was set that the microfilming would be completed before the turnover. It will be, and that assures that we will have access to the documents.

Mr. GILMAN. Well, the microfilming will be completed by the Berlin Document Center; is that correct?

Ms. PETERS. Yes.

Mr. GILMAN. But, we will not have a copy of that until after the agreement is in place?

Ms. PETERS. As I understand it, it will be filmed and it has to be turned into something else. But, I really would have to defer to—

Mr. GILMAN. Film turned into copies, I would assume. Mr. Bellardo, can you explain that?

Mr. BELLARDO. Yes. The National Archives will be receiving approximately 40,000 rolls of microfilm.

Mr. GILMAN. When will they receive that?

Mr. BELLARDO. Our understanding is that we will receive them in July.

Mr. GILMAN. Is that before the agreement is signed and completed?

Mr. BELLARDO. July 1 is—yes. Let me indicate this: that for practical reasons, we have asked that all of the film be transferred at once. The Berlin Document Center had been willing to begin send-

ing portions of the film earlier. But because of our move to the new building at College Park, our laboratories were down; we were not in a position to actually begin duplication on any large scale. So, we asked to have it all shipped at once when it was all completed, which would be in July.

Mr. GILMAN. Is that July date after the agreement is in place or before the agreement is in place? When will you have the microfilm in your possession?

Mr. BELLARDO. We expect to have it in our possession during the month of July.

Mr. LANTOS. Will my colleague, please?

Mr. GILMAN. I would be pleased to yield to the Chairman.

Mr. LANTOS. You will have it in your possession, but that does not mean it will be available to me.

Mr. BELLARDO. That is correct.

Mr. LANTOS. OK. So let me ask sort of the fundamental question. I mean, these horrors occurred during the 1930's and the early to mid-1940's. It is now 1994. What is the purpose of quibbling over a few months or a year? I mean, what is the great urgency of this transfer? Would it—would not reason and judgment and discretion and intelligence suggest that the agreement should be made effective after we are certain that all of these documents are available to any American citizen here in Washington without any problem? What is the urgency of it? This is not the shelling of Gorazde, where we have to act instantaneously, as we have failed to act and people are dying. What is—what is the urgency? What is the magic of this date, except that some bureaucrat someplace decided that it is a neat date? And that prompts this hearing. That prompts this hearing.

Your comments to Congressman Gilman's question are very helpful, Dr. Bellardo. Your mechanism is down. You will receive them in July and you hope to have them available by December. Is that what you are saying?

Mr. BELLARDO. No, not completely. Understanding the urgency of researchers to get at some of these series, particularly the Nazi party records, SS records, SA records, we are scheduling our duplication so that those series are duplicated first—

Mr. LANTOS. Yes.

Mr. BELLARDO [continuing]. And made available. However, the entire 40,000 rolls will take us approximately 2 years to complete.

Mr. GILMAN. Two years?

Mr. BELLARDO. Two years. We have stated this all along: the highest priority ones we know we will have available within the first year. I cannot say that by September, we will have all of the Nazi party records available, for example. But as each series is duplicated, it will be made available.

Mr. LANTOS. Well, explain to me why—and I know this is not your agreement, I am not asking you to justify somebody else's action. Maybe I will ask Ms. Peters and then yield back. If we could wait 50 years, why can we not wait 52 years?

Ms. PETERS. Let me—

Mr. LANTOS. I mean, what is—what is propelling this deadline?

Ms. PETERS. Let me address the question of why now. The most recent round of negotiations began in 1990. There were negotia-

tions in 1967 and 1968, which foundered because we insisted that private researchers have access on our terms and not on the German terms, the fundamental condition which has been met. Then, there was an ad referendum agreement never finalized in 1980 which did, however, reach the agreement that it would be assured by microfilm.

In 1988, a theft was discovered—that is, it was discovered that thousands of documents had been stolen from the BDC, possibly over—over decades. This elicited public interest, and concern from our Government and the German Government about the integrity of the collection and was, in fact, the reason why the negotiations resumed in 1990. It was, in fact, the proximate cause; although, again, it has been our intention since 1952 eventually to turn these—these documents over to the Germans in accordance with normal archival principles of leaving them where they were created and housed.

But, it was the theft that attracted public and government attention to the state of the archives and it was the desire of both governments to preserve these documents forever. That lent a certain sense of—well, not urgency, but—

Mr. LANTOS. Well, with all due respect, the theft would motivate me to improve security, not to negotiate a transfer agreement. I mean, it is non sequitur, what you are saying.

Ms. PETERS. Well—

Mr. LANTOS. What you are saying is that there was a theft of sizable proportions.

Ms. PETERS. Right.

Mr. LANTOS. Now the rational response to a theft of critical documents is to ensure that security is water-tight, not to accelerate the process of negotiating a transfer.

Ms. PETERS. That, of course—the theft, of course, also raised concerns in the German Government. And I think we should add here that the Germans are very well aware of the sanctity of these documents, and they are aware of their responsibility vis-a-vis the world, and they are aware that it would be indefensible if anything were to happen to this precious record. And we accept that they—that they have that awareness and have acted accordingly, not only in granting access to the BDC records, themselves, during the last 6 years, but also in administering the 95 percent of other Nazi records that are not in the BDC and have, in fact, been in German hands for decades. I am not aware of any problems with access to those—to those documents. They have been administered according to the solemn responsibility, which we and the German Government recognize they bear to do so in a responsible manner.

Mr. LANTOS. Congressman Gilman.

Mr. GILMAN. Thank you, Mr. Chairman. You have certainly raised an important aspect. What you are telling us, Dr. Bellardo, is that for a 2-year period, whether they are critical or not critical, there will be no access to some of these records because it is going to take at least that amount of time to copy them and make them available for scholarly research; is that correct?

Mr. BELLARDO. The series that are least likely to receive heavy research use will be those that will be duplicated in the out months. That is correct. Now in the meantime, we will have by

July a duplication plan that basically sequences out the specific order in which they will be duplicated.

Mr. GILMAN. Does the German Government ever microfiche these documents prior to this period of time? Has there been any prior microfilming?

Mr. BELLARDO. Do you mean for other records?

Mr. GILMAN. For these records.

Mr. BELLARDO. There have been two sets of microfilming for these records. In the early 1970's, there was a microfilming effort, but that was under the auspices of the United States.

Mr. GILMAN. Was that done prior to the theft of the records?

Mr. BELLARDO. It was begun—we do not really know when the thefts occurred. But, it was before the discovery of the thefts and it was microfilm that was of relatively poor quality. And when I visited the BDC last year in February, I indicated that two series in particular had to be re-microfilmed; and under Dr. Marwell, that has occurred. But the early filming was not of good quality.

Mr. GILMAN. Yes.

Ms. PETERS. May I say, Mr. Gilman, that there will not be access to our copy yet, but there will continue to be access to the originals in the Berlin Document Center under the same conditions that have prevailed for 40 years under this agreement.

Mr. GILMAN. Despite the fact that the microfilming has not been completed, there will be a guarantee that our people will be allowed full access to those documents?

Ms. PETERS. Well, we would expect that the same access that has been provided heretofore be provided.

Mr. GILMAN. Not expectancy. Is there any guarantee—

Ms. PETERS. What I am saying, sir, is that up until now, there have been cases when private requests have not been approved by our director. So, in fact, access to our copy here in the United States will be more liberal, since it will not distinguish between scholarly and private pursuits. But until our set is fully available, the access in Berlin to the originals will be on the same conditions that have prevailed for 40 years. That is the agreement.

Mr. GILMAN. Under the terms of the agreement, will there be limitations on access once the documents are available in the U.S. Government agency? Will there be the same limitations that apply—that were applied by the German Government?

Ms. PETERS. Well, the German law will prevail.

Mr. GILMAN. Will prevail on the documents here?

Ms. PETERS. No—oh, no—I am sorry. No, sir, that is, in fact, the main achievement of this agreement, is that our law will—

Mr. GILMAN. We will not have to abide by German criteria?

Ms. PETERS. That is correct, and that means that Nazi party records are not considered sacrosanct and we will not respect any particular right of privacy regarding Nazi party membership.

Mr. GILMAN. How will you be responding for non-U.S. nationals?

Mr. BELLARDO. OK. I think perhaps I should answer. Under FOIA in the United States and which—

Mr. GILMAN. Under what?

Mr. BELLARDO. Under FOIA, the Freedom of Information Act, and we will treat these records as under FOIA, documents are made available on an equal basis to any citizen, not just scholars,

and whether or not those citizens are American nationals or nationals of another country.

Mr. LANTOS. Will my colleague yield?

Mr. GILMAN. Yes, I would be pleased to yield.

Mr. LANTOS. You sure put your finger on it—on the issue that disturbs me the most.

Mr. GILMAN. Just one other question, Mr. Chairman. Which agency or which department within the State Department will be controlling this agreement and will be monitoring the agreement? And if there is any complaint, who will take care of that complaint?

Ms. PETERS. Sir, initially, any problem would come to the attention of our principal officer in Bonn; and immediately to Ambassador Holbrooke, who is deeply interested in this; immediately afterward, to me.

Mr. GILMAN. You say Professor Holbrooke, in what capacity?

Ms. PETERS. As Ambassador, Ambassador Holbrooke.

Mr. GILMAN. Ambassador Holbrooke.

Ms. PETERS. Is our Ambassador in Bonn, and he is deeply interested in this issue.

Mr. GILMAN. So, it would be the Bonn Embassy that we direct any inquiry to?

Ms. PETERS. Well, that—it would be to them that any problem with access would first—would first be directed.

Mr. GILMAN. What about access to the records held here in the United States?

Ms. PETERS. I would defer to Dr. Bellardo.

Mr. GILMAN. Who would we call upon?

Mr. BELLARDO. For example, a citizen, either of the United States or of another country who wanted access in the United States?

Mr. GILMAN. That is right.

Mr. BELLARDO. Well, first, as it relates to 85 percent of the documents or more, there would be no restriction.

Mr. GILMAN. But if there is a problem, who would we direct it to?

Mr. BELLARDO. Well, firstly, to the Archivist of the United States. And—

Mr. GILMAN. So the archivist of the United States is going to be in charge of these records, and if we have any problem, we should take it up with him. Is that right?

Mr. BELLARDO. Surely. Yes.

Mr. GILMAN. And not the State Department?

Mr. BELLARDO. No. Once they are accessioned into the archives of the United States.

Mr. GILMAN. Thank you and thank you, Mr. Chairman. I thank you for permitting me to intervene and I must be going now.

Mr. LANTOS. Anytime. Anytime.

You indicated, Dr. Bellardo—correct me if I am wrong—that the German archives—and this is, of course, the statement of our director at BDC, David Marwell, and I am quoting him, "The German Archives provides equal access for all; therefore, foreign nationals, U.S and third country nationals will have the same access as German citizens." That is correct, is it not? That is your testimony?

Mr. BELLARDO. My testimony relates to the access policy in the United States at the U.S. Archives. My knowledge of the access policy of the Bundesarchiv is primarily through conversations with Dr. Marwell.

Mr. LANTOS. OK. Would you—

Mr. BELLARDO. But that statement does not conflict with what I understand.

Mr. LANTOS. With what you understand. Secretary Peters, do you confirm that is your understanding—

Ms. PETERS. Yes, Mr. Chairman.

Mr. LANTOS [continuing]. Of what I just indicated?

Ms. PETERS. Yes.

Mr. LANTOS. But, that is the crux of the problem, you see. German citizens seeking access to the Berlin Document Center must have the permission of the German Federal Archives under the authority of the Ministry of the Interior. Now the German Ministry of the Interior does not oversee national parks, as does our Department of the Interior. It has a police function similar to the FBI. So this access policy is analogous to having researchers in the United States having to get permission of the FBI before looking at our National Archives, which I consider to be an absurdity.

The fact that German citizens have restrictive access means that giving U.S. citizens equal access, they, too, will have restrictive access. That is the crux of the problem. German policy is not analogous to our policy. And if people wish to get to the original documents, they will now have to approach those documents under German rules, which are more restrictive than our rules. Is that not true?

Ms. PETERS. The rules are more restrictive, Mr. Chairman, to the extent that the right of privacy protects an individual for 30 years after death. But, German law permits archivists to use discretion in overriding that when the case affects a person in the public eye, living or dead, for purposes of scholarly research and in—

Mr. LANTOS. Well, it permits discretion, but it guarantees nothing.

Ms. PETERS. In 19—well, I have got here lots of numbers: 452 in 1991, 821 in 1992, 863 in 1993—all approved with one only turned down. And I also have the desk audit, that Dr. Marwell kindly did for us, which says that they have, in fact, responded within a week. So not only have they overwhelmingly approved all access requests, except one for scholarly research, but they have done so expeditiously.

But, Mr. Chairman, I would like to make a broader point, and that is: we would not have concluded this agreement if we felt that it, in any way, jeopardized access—legitimate access to these documents. And if there is a specific area, a problem, a kind of access for—to any particular set of documents or for any particular set of researchers, we would be happy to address it.

Mr. LANTOS. Well, but, Secretary Peters, that is not a reassuring answer. Your notion that you would not have approved it unless it is OK reminds me somewhat of the testimony of the Assistant Secretary for Europe and the Middle East 2 days before the Iraqi invasion of Kuwait saying that they do not think it will happen; we can do business. So, I mean, the State Department is not the depository

of all wisdom. And the whole—the whole problem is, and I see—I think there is a very serious problem—is that leading scholars on Germany and on the Holocaust have been consulted just very recently about this whole matter.

The State Department just took this thing and ran with it. Members of Congress were not consulted. Members of Congress were not consulted and that is why you are having a hearing today. You should have—not you, I do not mean this personally, you understand that—the Department should have come in, brought us into the discussion early on, should have listened to all of our concerns, should have listened to the concerns of scholars, and the State Department would not be in this position today.

You did not invite us for the takeoff. You are inviting us to what may be a crash landing, and that is why we are—that is why we are not so happy about the procedure. We have not been consulted. The Congress of the United States has an interest in this matter because our constituents have an interest in this matter. And we are being told what you did, and that is not good. I am certainly not blaming you personally, but I am blaming the procedure.

Ms. PETERS. We, of course, always want to work with you on this, sir, and we recognize that the Congress has an interest, as we all do. In the——

Mr. LANTOS. Do you agree with me that Congress was not consulted in this matter?

Ms. PETERS. Well, not fully, sir, because——

Mr. LANTOS. Well, to what extent were we consulted?

Ms. PETERS. Well, I will tell you. Starting in March of 1989, as a result of these thefts I mentioned earlier, there were some letters from constituents that came to the State Department, and our responses detailed the ongoing—the plans for the microfilming and the turnover of the documents. And I have—I have four or five instances of such correspondence beginning in March of 1989.

Mr. LANTOS. With individuals.

Ms. PETERS. Well, that is to say we answered on behalf of Members of Congress inquiries from their constituents, including from Senator Garn, and former Senator Boswitz, former Senator Gore.

Mr. LANTOS. I am not—I am not talking about——

Ms. PETERS. So, in fact, the correct——

Mr. LANTOS. I am not talking about constituent inquiries, and I would like to ask you to answer the question I am raising. To the best of my knowledge, Congress was notified—not consulted—in December, 1993; is that correct?

Ms. PETERS. Yes, sir.

Mr. LANTOS. December, 1993, Congress was in recess. So, Congress was notified during a congressional recess of an action taken by the State Department. Congress was never consulted in the development of this agreement. That is the original problem you are now facing, and that is the issue we will have to revisit and possibly rectify. Because unless you satisfy congressional concern, I am certain that Congress will be able to take legislative action that neither of us would wish to see. So the Department of State has an obligation to deal with the concerns that could have been dealt with prior to the conclusion of the agreement with the German

Government. That is the dilemma you now face, Warren Christopher now faces.

You concluded—the Department concluded an agreement with the German Government, totally ignoring the Congress of the United States and is now being confronted with problems that should have been dealt with during the course of your negotiations with the German Government. That is where we stand.

I am sorry I kept interrupting you, but I thought this dialogue was extremely helpful. So before I move on to your colleagues, is there anything further you would like to say?

Ms. PETERS. Just one point, sir.

Mr. LANTOS. Please.

Ms. PETERS. And that is that with regard to consulting those groups and individuals who have an interest in the preservation of these documents, most of them use the Berlin Document Center and they have talked to Dr. Marwell during their visits to the Center. So—oh, and not only that, but he and a German colleague appeared at a panel discussion in 1991 before the German Studies Association, which, as you know, is a large group that includes many, if not most, people who regularly use these documents. And it is the concerns that surfaced during those discussions that we addressed in concluding the agreement. So, I—I believe we made a—not only an effort, but a successful effort to do that, sir.

Mr. LANTOS. Well, the fact that somebody appeared on a panel show does not mean consultation with all interested parties—

Ms. PETERS. No, sir.

Mr. LANTOS [continuing]. With all due respect. And it certainly does not substitute—a panel discussion does not substitute for congressional consultation.

Ms. PETERS. No, sir, and I will immediately—after the conclusion of the hearing, I will return to the State Department, and I will communicate to the Secretary and to Ambassador Holbrooke the depth of your concern and your—the points you have made.

And I reiterate that we want to work with you. And if you raise issues—and I can understand why you might not judge the State Department as the best repository of wisdom on these issues—but if you, sir, have concerns—

Mr. LANTOS. It is not the depository of all wisdom.

Ms. PETERS. Or any wisdom, in that—in that case.

Mr. LANTOS. Not all wisdom.

Ms. PETERS. But if you—if you, sir, have concerns about the way this agreement might work—

Mr. LANTOS. Well, clearly, there are others who have concerns, too.

Ms. PETERS. Yes.

[The prepared statement of Ms. Peters appears in the appendix.]

Mr. LANTOS. Mr. Richard.

STATEMENT OF MARK M. RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION AND ASSISTANT TO THE ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. RICHARD. Thank you, Mr. Chairman.

Mr. LANTOS. Could you talk into the mike?

Mr. RICHARD. Certainly. Thank you, Mr. Chairman, and with your permission, I will merely summarize my written statement, which you have indicated will be submitted for the record in total.

It is a pleasure to be here and discuss this vital topic. For the last 15 years, since its creation and assignment to the Criminal Division of Department of Justice, I have had the distinct pleasure of overseeing the Office of Special Investigations, which has the task of detecting, investigating and instituting legal action, where feasible, against persons who were involved in Nazi-supported acts of persecution.

OSI was created in 1979 and has a staff of approximately 35 prosecutors, historians, investigators and support staff. Since its creation, OSI has stripped 48 people of their U.S. citizenship, and 42 persons have been deported, extradited or otherwise removed from this country as a result of OSI efforts.

We recognize at the Department of Justice that there is a biological clock ticking with respect to the work of OSI, thereby adding a high degree of urgency to our efforts. At the same time, due in large part to the opening of key archives to us in the former Warsaw Pact countries, we are currently filing new prosecutions at the fastest pace in our history.

From the start of the work at OSI, we have relied extensively on the Berlin Document Center as an essential investigative resource. Every OSI case begins with a check of the BDC files, and the Center has provided key evidence in numerous cases. During this time, the Department of Justice has received excellent cooperation from the BDC, and all of our hundreds of requests have been processed quickly and professionally. In particularly urgent situations, such as those involving the so-called "watchlist," the BDC has responded to us by fax literally within hours of our request.

Throughout the years of negotiations on the agreement to transfer the Center to Germany, the State Department has been very sensitive to our enforcement concerns and has closely coordinated their efforts with us. For this, we are extremely appreciative. We have carefully assessed the terms of the transfer and have concluded, based on that analysis, that our enforcement efforts are protected in the following ways:

We are obtaining guarantees that until the microfilm duplicate set of the BDC holdings is fully accessible in the United States, the BDC will continue to respond to our enforcement requests in the same timely fashion as before. The German Government has undertaken to provide telefax copies of BDC records we request within 24 hours, whenever we assert that they are, in fact, urgently required. As already noted, the German Government has committed itself to granting the United States full access to original BDC records in perpetuity.

Our confidence in the conclusion that the agreement protects our enforcement interest is, in fact, driven in part by our experience in dealing with the Bundesarchiv for the past 15 years.

Mr. LANTOS. Mr. Richard, may I stop you for just a second?

Mr. RICHARD. Sure.

Mr. LANTOS. You are a high ranking official in the Criminal Division, is that correct?

Mr. RICHARD. That is correct.

Mr. LANTOS. And you are an attorney?

Mr. RICHARD. That is correct.

Mr. LANTOS. And you are testifying that in terms of our law enforcement agencies, you are satisfied in terms of access?

Mr. RICHARD. We anticipate maintaining the status quo on this agreement.

Mr. LANTOS. Right.

Mr. RICHARD. Yes.

Mr. LANTOS. And I agree with you. I read the agreement and I think properly your concerns—your institutional concerns, have been quite adequately addressed. My question relates to private concerns. I would like to ask you, as a distinguished attorney who has been working in this field with great effectiveness for 15 years, do you believe that my concerns with respect to private access are unfounded?

Mr. RICHARD. The concerns of private access are critical concerns. Whether they have been addressed adequately and completely, I must defer to the negotiators of the agreement.

Mr. LANTOS. You will not be able to duck it with me. Other equally bright lawyers have tried during the HUD investigation. But, I want to save you time. So, do not go down that path because that is a dead end—that is a dead end. You will be here until tomorrow morning and finally you will answer the question.

You have been dealing with this issue for 15 years.

Mr. RICHARD. That is correct.

Mr. LANTOS. You are a distinguished attorney and I respect your competence. But, you are testifying, and I agree, that in terms of our law enforcement agencies—which is your responsibility, I fully understand that—you feel satisfied of continued adequate access; is that correct?

Mr. RICHARD. That is correct.

Mr. LANTOS. And I agree with you. My question is an entirely different one. My question really relates to two different issues. Number one, does the agreement—which you did not negotiate, but you are familiar with—fully protect private access of U.S. citizens? And secondly, in your judgment as an expert witness, not as someone who negotiated this, does it provide full and unimpeded access to nationals of other countries?

Mr. RICHARD. Let me answer it this way, if I may, Mr. Chairman, if you are seeking—

Mr. LANTOS. As long as you answer it, you may answer it any way you choose.

Mr. RICHARD. I will try to answer completely, and this is my assessment: if you are seeking total 100 percent legal guarantees, if that is the objective and the standard to be applied in this analysis, then I suspect you are right. As to every conceivable situation in which a private individual may be seeking access, will he or she necessarily be afforded access to the original materials in the archives, and will the documents be available when and precisely in accord with his or her desire to have access, I suspect the answer is no, that there will be on the margins particular instances where that will not be accomplished. Because, what you would be envisioning is a guarantee of full, complete, unfettered access under all

situations, and that, even under our own law, is not envisioned. There are restrictions on access.

To me, the issue is: are those restrictions unreasonable; are those restrictions appropriate.

Mr. LANTOS. But, you see, as long as we have control over the original documents, an individual may contact his or her Congressperson, who, then, would act as a very effective ombudsmen on behalf of a constituent, and I would very much doubt that the archivist would deny requests which are reasonable.

There is no such guarantee under the new arrangement. We have no mechanism for ensuring that the original documents will be available to private U.S. citizens, or to private individuals or organizations from other countries who may have a legitimate interest in these documents. We anticipate that goodwill will prevail and that will make access free. But, that is really just a question of hope, is it not?

Mr. RICHARD. I think it is more than hope, Mr. Chairman. Again, let me preface my remarks. I am way out of my element here. I am not a diplomat and I do not profess to have an appreciation of all the dimensions of our bilateral relationship here. But, it appears to me that we have a very good basis for expecting compliance in the spirit of openness and free access by the German Government.

Mr. LANTOS. But—

Mr. RICHARD. As I appreciate it—and, again, I am venturing into areas where I am not encumbered by knowledge—we have restrictions on our own archives. We do not have unlimited access to archival material in all situations, even the United States.

So, again, we come back to what are the bases of the possible rejections; what are the alternatives? We have what appears to me a rational situation where all scholars around the world will have access, ultimately, as I appreciate it, to the records—to the microfilm records in the United States. During the interim period when those records are not available, there will be mechanisms to bring the full weight of the U.S. Government to bear on the German Government where the German Government is unresponsively to a legitimate request.

Whether they will be guaranteed effectively that this will accomplish full access, I suspect the answer will be no. As you pointed out, even a Presidential request has yet to accomplish its objective.

Mr. LANTOS. And this is with a government which is friendly to us. No one can foresee whether there may be governments in Germany in the future which will be less than friendly. These are agreements between governments whose attitudes change. The attitude of the Russian Government—the Government of Russia has changed its attitudes toward the United States during the course of the last 2 years in very significant ways. And there is no one in the State Department who can guarantee the degree of cordiality with which the German Government will view the U.S. Government 5 years from now or 15 years from now. These are issues which transcend the nature of our intergovernmental relationship.

We are giving up something of which we now have possession in anticipation of a continuing flow of cooperation and goodwill, which I earnestly hope will be a justified assumption. But, Ms. Peters, it

is nothing more than an assumption. And I think it is a matter of considerable concern because the State Department cannot guarantee anything. And your example of the unsuccessful involvement of the President of the United States in a minute matter demonstrates the validity of my point. Because, clearly, our Government did not push the matter beyond the Presidential intervention.

And whether we will raise the issue 5 times or 15 times or 50 times is immaterial. We are at the mercy of another government. That is the issue. And the question remains: why did we put ourselves at the mercy of another government in this matter? We had a free access policy, and we now have a less than free access policy, and we negotiated this.

Now had we—had Congress been in on this in a consultary fashion, and had we not seen these problems, you would be home free. But since you did not consult, you are not home free. You will have to, at this stage, satisfy us. If you cannot satisfy us, you will have to find mechanisms of readjusting your agreement with the German Government, saying there is congressional opposition that you did not anticipate. But, it is now here. And since it is now here, you have to deal with it.

Anything else, Mr. Richard?

Mr. RICHARD. No, Mr. Chairman, that concluded my summary. [The prepared statement of Mr. Richard appears in the appendix.]

Mr. LANTOS. Thank you, very much. Dr. Bellardo, anything further to what our dialogue has been?

STATEMENT OF LEWIS BELLARDO, ACTING DEPUTY ASSISTANT ARCHIVIST, NATIONAL ARCHIVES

Mr. BELLARDO. I think that basically, you have raised all the salient points that I would have made in my presentation. I certainly would be happy to answer any additional questions regarding the quality of the microfilm, regarding our procedures for preservation, regarding our timeframe for access, and regarding our policy relating to access.

[The prepared statement of Mr. Bellardo appears in the appendix.]

Mr. LANTOS. Well, I have one specific question to ask of you, if I may. It is my understanding that the U.S. privacy laws restrict release of medical records of nonhistorical persons, is that correct?

Mr. BELLARDO. Yes and no. Could I explain?

Mr. LANTOS. Yes.

Mr. BELLARDO. OK.

Mr. LANTOS. Yes and no.

Mr. BELLARDO. OK. We, for these records and for records of the Federal Government, use the Freedom of Information Act, rather than specifically the Privacy Act. That is what I am advised by our access staff. There is an exception in the Freedom of Information Act relating to medical information or privacy information of living individuals. There are certain exceptions to that, and certain procedures for determining death and so on and so forth.

A determination has been made, as it relates to Nazi party members, as it relates to SS members, SA members, in organizations where individuals voluntarily chose to become part of the Nazi ef-

fort, that this level of privacy does not apply to the individuals. Now if there are children—their children, for example, we are not aware of cases of this kind, but people who are basically not those who chose to affiliate themselves with these organizations, we would have to look at that information. But here, again, we are looking at not just surface-level medical information, but detailed medical examination and so on and so forth; things that are—the operative word for us is “clearly unwarranted invasion of privacy,” as opposed to simply a private matter.

I hope I answered your question.

Mr. LANTOS. I want to give an opportunity to my friend and colleague from Pennsylvania to ask whatever questions she may have. Congresswoman Margolies-Mezvinsky.

Ms. MARGOLIES-MEZVINSKY. If I am re-asking something, please forgive me. I am a little confused by all of this. How do we know that the copies are complete?

Mr. BELLARDO. In terms of 100 percent certainty, no individual can give you that assurance. In terms—

Ms. MARGOLIES-MEZVINSKY. So, there was no one guiding these copies—this copying?

Mr. BELLARDO. Oh, no, of course there was. There were multiple levels of quality assurance. There was a whole process of microfilming two-camera originals, rather than one. There were procedures such as a routine rule that both the front and back of every document would be filmed, whether or not there was information on it, just to be certain that there was not a chance that a camera operator would forget to turn the page on a document that had information. There was a first tier of checking of the film and then there is a second tier of checking. But, no one can tell you with absolute certainty that there is not a single image that has been missed.

In the event that such a discovery were to be made, our procedure would be the same as it would be for our own microfilming that we do, and that would be to go back to the Bundesarchiv and say we have discovered a missing frame; we need this refilmed, together with certificates of authenticity, which we can then use to add to our collection.

Ms. MARGOLIES-MEZVINSKY. One of the things that really bothered me, and I would like to echo what Chairman Lantos has been saying, is that there is a lot of “expects” and a lot of “anticipates” in your testimony. How can we make sure? The number of times that I heard you say, “we expect this is going to happen; we anticipate that this will happen.” For those of us who really care about this issue, what can we do to make sure that the integrity of these files remain intact?

Mr. BELLARDO. Well, are you talking about the original records in Germany? Or are you talking about the microfilm—

Ms. MARGOLIES-MEZVINSKY. I am talking about the whole process. I am talking about what we are looking at right now. What our fears are.

Mr. BELLARDO. OK. I can only tell you that I personally have examined the microfilm and have found it to be of the highest quality. I indicated to Chairman Lantos, I think when you were gone, that there were two sets of filming: the early microfilming done in the early 1970's, which—

Ms. MARGOLIES-MEZVINSKY. Yes—no, I heard.

Mr. BELLARDO. Oh, you heard that. OK, I am sorry.

Ms. MARGOLIES-MEZVINSKY. Yes, I was here when you did it.

Mr. BELLARDO. But in terms of the quality of what is there, the procedures that were there, they certainly meet and exceed archival requirements. Now in terms of integrity of the film once it is in our possession, I can assure you of a few things. One is that there will always be a preservation copy stored underground in a facility whose atmospheric conditions basically can guarantee us a 500-year life expectancy for that generation of the film. Obviously, if that film started to have problems, we could duplicate it within that 500-year period, assuming we are all here.

But, secondly, there will be a duplication master of that film, and then there will be a reference copy of that film. So any one who would attempt to alter a reference copy of the film, we would have two copies behind that would indicate that something—that there was not integrity to that roll.

Ms. MARGOLIES-MEZVINSKY. How do you answer those who say there is really no substitute for the original? There is just no substitute for the original, for whatever reason. I mean, if there are notes on the side of the page—there is no substitute. So that someone goes there and the response—the government response is, “Well, you have copies of your own.” There is so many different permutations of—there are so many themes—variations on that kind of theme that we are leaving ourselves open to. And when I heard you say “kind of expect and anticipate,” it really concerned me.

Mr. BELLARDO. Could you specifically indicate which statements that you are referring to when you say “expect and anticipate?”

Ms. MARGOLIES-MEZVINSKY. Well, when earlier Ms. Peters was talking, there was a lot of “we expect that the agreement will be; we anticipate that we will have no problems.” That really concerns me.

Mr. LANTOS. If my colleague will allow—I want to show you what the microfilm products look like. Well, there is no way on God’s green earth that I can read this, and that is what we will have. The Germans will have the original documents. We will have this.

Mr. BELLARDO. May I please respond to that?

Mr. LANTOS. Please.

Mr. BELLARDO. There are firstly great preservation problems with some of the original paper documents. I think I can—well, I can state with certainty that the paper records will not survive as long as the microfilm that we have.

Mr. LANTOS. We understand that.

Mr. BELLARDO. OK.

Mr. LANTOS. We fully understand that. But the current paper record is more legible than this.

Mr. BELLARDO. In every case where I checked an original document against the microfilm that has been filmed under Dr. Marwell’s administration, the image on the microfilm was as good as the paper image—everything that I checked. Now, I cannot attest to every image of the 40,000 rolls. But, in general, the nature of microfilm is to increase contrast, rather than decrease contrast.

So if there is any contrast there at all—meaning if you can read it on the paper—you——

Mr. LANTOS. This is a current microfilm?

Mr. BELLARDO. Well, I would like to have the original here to compare it with you. I can only——

Mr. LANTOS. We will give you this copy so you can check it out.

Mr. BELLARDO. OK. I would be happy to do that.

Ms. MARGOLIES-MEZVINSKY. That, obviously, is of great concern. What exactly are the Germans' plans for these files?

Ms. PETERS. We know of nothing specific. It is possible that the Germans may desire to consolidate all records in a central facility in Berlin. Before they would do so, they would have to consult with us under the terms of the agreement. But the purpose of such a reorganization, if it were to take place, would be to make—to restore the original integrity of the collections. And I believe the scholarly community would welcome such a—such a reorganization since it would be done with what archivists call a concordance to ensure that you can still track down the BDC files within it.

Ms. MARGOLIES-MEZVINSKY. We have heard that they are going to be reorganized, reclassified, perhaps disbursed throughout Germany and, in some way, disassembled. How would this affect the integrity of the files? One would think that although we can fool around with semantics for a very long time in order to keep any integrity within those files, disassembling them would not be part of that equation.

Ms. PETERS. The agreement guarantees the U.S. Government access to the original documents for the purposes listed in the agreement in perpetuity. So, certainly, I think—I cannot imagine that anyone would interpret that to mean anything but that the documents would be findable and available. So were there to be any plans to reorganize, I do not think that would threaten our ability to access those originals. But——

Mr. BELLARDO. I do not have personal knowledge of what their plans are. I can say that given the fact that these have been micro-filmed, given the fact that the microfilm has been indexed, if they were in our custody, we would not take the trouble to reorganize them in that way. It would just be too labor intensive to do so. And if, in fact, there was some need to create some kind of a collection that was in the same order that the documents might have been originally, it probably would be cheaper to scan the microfilm and reorganize it through some optical medium so that a person could actually page through what the records would have looked like, rather than sitting there and actually rearranging them by hand page by page.

I cannot say that that is not in their plans. But, I can say that it would be an enormous expense.

Ms. MARGOLIES-MEZVINSKY. What I am having trouble with throughout this whole thing is that one issue that perhaps may be important to a scholar or to an individual or to a victim may certainly not be the kind of issue that is important to the ombudsman or the liaison. And, in fact, when it comes up for review, or whatever it is called, it may be more of a headache than anything else that—I mean, how do we—how do we make sure that those people

who are so terribly interested in this issue really do have the kind of access to the original documents that they deserve?

Ms. PETERS. We would expect that most of those people would want to consult our set, once they are available, of course, because it would be easier and cheaper to do that. So the most important period is the transition period, then, between the time that the documents are turned over and the time that the files that the researcher or private individual is interested in are ready to be used.

So during that period, as I said, we are prepared to define as a U.S. interest, under the terms of the agreement, legitimate requests from Americans and third country nationals. And I am not suggesting that we—the State Department would, in fact, set itself up as the final arbiter. We are prepared to work aggressively with the German Government if any such problem occurred. But, we are also certainly willing to work with you and with the Chairman on defining what—you know, when such a case might come up, if such a case does. As I said, in the 4 years for which we have records, the German Federal Archive authorities have only denied one request for scholarly research.

So, you know, I personally hope that the requests will continue to be routinely approved, and I see no reason not to make that statement. But if it is not true in any individual case, we are certainly willing to go to bat on the basis of your wishes for that individual or organization.

Ms. MARGOLIES-MEZVINSKY. Thank you and thank you, Mr. Chair.

Mr. LANTOS. It is a pleasure. My understanding is that the incoming director of the Berlin Documentation Center, Dieter Kruger, made the following statement: "Whether a politician was a Nazi party member is not historically useful." Are you aware of this statement? Any of you.

Mr. RICHARD. I think that was quoted in some of the—

Mr. LANTOS. Could you get the mike closer to you?

Mr. RICHARD. I am sorry. If I am not mistaken, something of that nature was cited in one of the articles written in either a magazine piece or some other publication. I think there was some indication that that was his representation. I may be mistaken, though, Mr. Chairman.

Mr. LANTOS. Well, if the quote is accurate, what would be your reaction to it, Mr. Richard?

Mr. RICHARD. I am not sure. In the context of the agreement, I would have to defer to the negotiator as to whether that was in accord with the terms of the agreement.

Mr. LANTOS. Ms. Peters, if the quote I just gave you is accurate, what would be your reaction to it, representing the State Department?

Ms. PETERS. That our own rules for access are not the same and, in fact, we will make sure—in other words, as a practical matter—

Mr. LANTOS. I am not talking about access. He merely says that "whether a politician was a Nazi party member is not historically useful."

Ms. PETERS. If I may speak personally for a moment, sir. If I were a German voter, I would disagree.

Mr. LANTOS. How about as an official of the State Department? That is how you are testifying.

Ms. PETERS. Yes, that is correct. I would have to disagree. I think that—I am sure researchers would disagree as well. It is clearly—clearly relevant to many historical, political and other questions.

Mr. LANTOS. What do you think, Dr. Bellardo?

Mr. BELLARDO. I would disagree.

Mr. LANTOS. I would be grateful if you would around while we listen to the second panel, because we may wish to come back to you. I want to thank all three of you.

And I would like now to have Professor Geoffrey Giles, Professor of History, University of Florida, Chairman of the Archives Committee of the German Studies Association; Professor Henry Friedlander, Professor of History, Brooklyn College; Mr. Elan Steinberg, representing the World Jewish Congress; Mr. Jess Hordes, representing the Anti-Defamation League, accompanied by a Washington counsel. Please take your seats.

I want to welcome all of you. Your prepared statements will be entered in the record in total. I would be grateful if you could summarize your remarks. We will begin with you, Professor Giles.

**STATEMENT OF GEOFFREY GILES, PROFESSOR OF HISTORY,
UNIVERSITY OF FLORIDA AND CHAIRMAN, ARCHIVES COM-
MITTEE, GERMAN STUDIES ASSOCIATION**

Mr. GILES. Thank you, Mr. Chairman.

I would like to thank you for—first of all for consulting—

Mr. LANTOS. I would be grateful if you could get a little closer to the mike.

Mr. GILES. Thank you first of all for consulting, I think for the first time, with scholars who have actually used the Berlin Document Center and are familiar with it.

The recent statements by senior German archivists about probable restrictions of access to the documents in the BDC are causing grave concern to historians of modern Germany in this country.

My own experience of working in the BDC ranges over the past 20 years, and I am pleased with the microfilming of the archive because of preservation concerns. But, I must add that on certain occasions, there is no substitute for the original document, as you have indicated with the copies which you have shown to those present.

Despite some rumors to the contrary, it appears that scholarly research by historians from this country and others will continue on a business as usual basis after the first of July. That, at least, is the expectation that Dr. Marwell has of his successor, Dr. Kruger. It is certainly disturbing that Kruger has been restricting researchers on the Bergen-Belsen concentration camp, at the Berlin-Hoppegarten archive he currently heads, to two files per day, making their work extremely difficult. The explanation is that Hoppegarten is short staffed and that is not expected to be the case of the BDC.

Yet, that is no reason not to press for safeguards. With the economic situation in Germany still rather uncertain, the government may well be obliged to cut positions at any of its archives in the

next few years, which could provide a plausible excuse for severe restrictions not currently expected.

In any case, applications for the use of BDC records will increase enormously as ordinary Germans become eligible for access. In 1993, the BDC conducted 20,000 name searches, and the experience of the Stasi secret police archive in East Berlin indicates that those requests may increase massively in the future.

The German Federal Archives has a generally very good record of cooperation with historians. But, it should be noted that that is dependent upon the goodwill of its leadership at any particular moment. The archives law that regulates access and controls privacy is not in itself restrictive, but such laws can be interpreted in unhelpful ways. The record of the relations of German archives in general toward academic historians trying to conduct research on the Nazi period has, over the last 25 years, been at best a mixed one, and sometimes downright obstructionist.

Archivists have lied about the existence of files, they have flatly refused to let scholars see them, and occasionally they have even burnt Nazi files rather than reveal the compromising material that they contain. The worse excesses of this kind occurred in the 1970's, but with the passage of data protection laws in the 1980's, many obstacles were again laid in the path of those investigating human rights violations under the Third Reich, leading to a widespread perception that it was not, as was the intention of the law, the privacy of the victims that was being protected, but rather that of the surviving Nazi persecutors.

For example, the archives law of the state of Baden-Wurtemberg was widely acclaimed as one of the most "research friendly" in Germany. Yet, as late as 1988, my own research was completely blocked when I tried to investigate the case of a university professor who had been unjustly arrested and probably tortured by the Gestapo into signing a confession. The unfortunate man was then castrated by a prison doctor before his trial, which it was feared would lead to an acquittal, and he was stripped of his doctorate by the University. I was denied access to the files with the argument that the matter was too sensitive.

When I publicly deplored this cover-up, the chancellor of the university began to publicly defame me, and it took a feature on the main evening news on German television before the Minister of Education intervened to promise reasonable access to such files. I mention this incident in order to underline the fact that there are still very many people in Germany, often people in powerful positions, who will do all they can to prevent research into the Nazi history of their institution, city, state or country.

Mr. LANTOS. Your example is a particularly shocking one. But, it really should not surprise anyone when revisionist history denies the very existence of the Holocaust. And it is quite obvious that large numbers of people, many of them in positions of power, are hell bent on rewriting history, and part of rewriting history is to deny Nazi atrocities. So, I am pleased that you mention this incredible example. But, it fits into the frame of what we expect from large numbers of people.

Mr. GILES. Yes, Mr. Chairman. The microfilming of the BDC records is a great step in the direction of preventing such abuses,

apart from two caveats: firstly, I cannot believe that it will take less than 2 full years for the users' copy to become available in the National Archives; and secondly, the National Archives' own privacy restrictions have not yet been fully clarified.

If all goes well, American researchers will be able to work on the BDC material in this country within the 2-year timeframe. Yet, just as staffing cuts may alter the conditions of access in Berlin, we cannot know in advance what other priorities within the National Archives may remove staff from this particular project, perhaps delaying availability for several more years. During this interim period, it is especially important that historians continue to be allowed to use the original documents in Berlin.

And on the second point regarding privacy restrictions, I have to express my astonishment that the National Archives is imposing any restrictions to bona fide researchers on access to the microfilms. While such hindrances have become more frequent in German archives in the last decade, they have never been imposed upon users of the BDC. And that is why it has been such a crucial archive for the investigation of the Third Reich. And, therefore, any such new restrictions which move toward the new German practice, as we hear from sources in the National Archives, will worsen conditions of research and, indeed, directly hamper the efficient and speedy completion of research in this area.

The prognosis, therefore, is not good. It looks as though, as a result of the BDC transfer, important research projects into the Nazi period will at best be made more cumbersome, and at worst, research into these topics could virtually cease for the next 2 years, if access to the BDC is not guaranteed to American researchers. This is a serious matter indeed, the more so in light of increased public interest in the Holocaust following the appearance of the move, "Schindler's List." I believe it to be vital for Congress to express these concerns in a forthright manner to the German Government.

Thank you.

[The prepared statement of Mr. Giles appears in the appendix.]

Mr. LANTOS. Thank you very much. Professor Friedlander. Please speak directly and very close to the mike.

STATEMENT OF HENRY FRIEDLANDER, PROFESSOR OF HISTORY, DEPARTMENT OF JUDAIC STUDIES, BROOKLYN COLLEGE, CITY UNIVERSITY OF NEW YORK

Mr. FRIEDLANDER. Mr. Chairman, it is a great honor to testify before you about the transfer of the Berlin Document Center, known as BDC, from American to German control. My first experience working with German documents in Allied custody dates back to 1957, when I did research for my Ph.D. dissertation on photocopies of German cabinet minutes at the British Foreign Office Library in London, and later in the United States on microfilms at the National Archives and the Hoover Institution. Further, in 1958, I worked for the American Historical Association in Alexandria, Virginia, selecting and describing captured German documents for microfilming. My first research experience with the records of the Berlin Document Center, however, came almost 20 years later, in 1975, and has continued until today.

The BDC is a unique archive holding personnel records from the Nazi party, its formations, and government agencies. It provides biographical information essential for any historical writing about Nazi Germany. In my most recent research project, this involved, for example, information about 79 physicians and scientists involved in the murder of the handicapped, and later also the murder of Jews and Gypsies—and I have passed on to you some rough data to give you an idea of the kind of information that can be collected.

As you can see from my summaries about various physicians and scientists, I recorded their dates and places of birth, the years they received their medical degrees and licenses, their specialization certifications, and their memberships in the Nazi party and its formations. Although BDC records are organized by person, not by subject, information about each person is filed in various collections. Thus, information had to be compiled from the personnel records of each of the 79 persons in several distinct record groups. Multiplying by eight, this involved documents from at least 632 locations—in the future probably 632 microfilm rolls at the National Archives.

To compile such 79 profiles from microfilms would be extraordinarily difficult and cumbersome. And may I add as an aside, Mr. Chairman, that listening to the representative of the National Archives, I applaud that they would make available first the most important records. But if you would want a profile of, let us say Mr. Mengele, you would need as well his university records, which are low profile and will obviously be available 2 years, or 3 or 4 down the line.

In the years of American control of BDC, access was total, working conditions ideal, and service friendly and efficient. This will be sorely missed. And may I interject again, Mr. Chairman: I have listened to the State Department's presentation concerning access granted through the German ministries, but as I understand it—and I may be wrong—access is not granted openly as it is to us. We go there and say, "I want to work on this and this project." Mr. Marwell—Mr. Simon before and Mr. Bauer before him—lets us in if we call for names. Germans however, must say, "I want to work on so and so," and they say, "I want to see this, this and this." And the German archivist passes on the specific request. Once they are there, they might say, "Oh, I want to see something else," and they must then go through the whole process again. That has been one of the ways that it worked. So that requests granted, be it 800 or 1000, may be—I do not know—that 30 people ask for 200 requests each. I do not know how it works exactly.

Microfilms have their uses, but they are not a substitute for the original documents or even for good photocopies. They are better than nothing, and thus serve an important security function. But for research, they are decidedly inferior. Microfilms do not provide the texture of the original, as has been pointed out. They make comparisons difficult. One can look at only one frame at a time—you cannot compare the two documents of the same person from different offices. Research in microfilm requires a constant change of rolls, as anyone who has worked in microfilm over at the National Archives knows.

Further, copies are simply not as easy to decipher as the original, especially in records that include so much handwriting. In some cases, copies are almost unreadable, as you can see from the samples I passed on to you, involving the staff of the killing centers Belzec, Sobibor, and Treblinka, the Operation Reinhardt films, which were partly burned.

Finally, as I get older, I have discovered that microfilm reading and bifocal glasses are simply not compatible. I may, Mr. Chairman, indicate that the representative of the National Archives is undoubtedly correct that these are very good microfilms. I have not seen them. But, in films, as the ones I have passed on which are already deteriorating, a copy is terribly—virtually impossible to read, and I can read it only because I read the original and basically knew what was on it. However, with a great deal of money you can improve this. We have published a volume in which some of these documents appeared. Garland Publishing in New York, which is a for-profit publisher, spent a great deal of money to improve these films. That may well be true also for these microfilms. But when you make copies of these microfilms in the National Archives, those copies of copies, and copies of copies will, again, look like this. So, it is not necessarily the nature of the microfilm itself, but what copies you get from the microfilm, and materials and machines all deteriorate and so forth.

I, therefore, believe that regardless of who owns these documents, the originals should remain as accessible as they have been under American custody. I do not quarrel with the desire of the Germans to possess their Nazi personnel files, although I do not understand why they want to spend large sums of money to do so at a time when they find it difficult to pay for the modernization of archives, libraries, and universities in East Germany. I do fear, therefore, that the transfer agreement will not, however, guarantee such access.

My research experiences in Germany, both at the Federal Archives and those on the state level, have shown me that access is often granted or denied in a completely arbitrary fashion. In some places, total access was granted and copies were provided in an open and efficient manner. I would never have been able to complete my last research project without the generous support of the state archives in Stuttgart, Wiesbaden, and Berlin. But in other local archives, the opposite has been true; the archives in Berlin-Dahlem, Dusseldorf, and Hamburg are notorious for restricting access.

The Federal Archives in Koblenz and the military ones in Freiburg have also been most forthcoming, granting access and providing copies. But there were exceptions, and those are revealing. The so-called Arnold collection at Koblenz contains official German Government documents concerning the fate of the Gypsies during the Holocaust. But, they are available only with the permission of the donor, the so-called "Gypsy expert" Hermann Arnold, who had received the documents from the Nazi perpetrators. The collection includes minutes of a meeting, for example, of senior officials of Heydrich's security police, a document as important for the history of the murder of Gypsies as the Wannsee minutes are for those of the Jews.

At the 1991 meeting of the German Studies Association in Los Angeles—the very panel that the representative of the State Department has mentioned—I publicly asked Klaus Oldenhage, the senior official of the German Federal Archives who participated at a panel I chaired, about this document. He denied that any such documents would be kept secret and gave me his personal word, his assurance, that he would provide a copy. I am still waiting.

My encounter with other types of German records has been useful in placing my archival experiences in perspective. For the last 10 years, I have conducted research in the postwar judicial records of German war crimes trials. Although there is no obligation to open such recent records for research, I gained full access because state attorneys, even the attorneys general, were anxious to make them available. My dealings with state attorneys have been eminently satisfying, but it was based on personal contacts, and the rules of the justice ministries, which are more liberal and more flexible than those of the interior ministry that controls the archives.

Both judiciary and archives demand privacy for individuals mentioned in the documents, the infamous Datenschutz, but the judiciary have usually just asked that the researcher sign an agreement not to mention individuals unless they are “persons of history,” which includes, after all, all Nazi functionaries; they do not ink out the names, as one finds in other places. Still, recent changes in judicial regulations require permission from the ministry for access granted to non-Germans, in their phraseology: “persons who do not reside in the territory covered by the German penal code.” I have had no personal trouble gaining this permission, but it shows how easily access could be limited for Americans.

Copies of most judicial records have been collected at the Central Office for the Investigation of Nazi Crimes in Ludwigsburg. The Ludwigsburg collection is very similar to that of the Berlin Document Center. Both were originally designed to serve a government function, and have continued to do so while also functioning as a research archive. Both grant easy access, give expert guidance, and provide copies.

As in the case of BDC, the Federal Archives has been anxious to acquire the Ludwigsburg collection. There have been several serious objections to such a transfer of records. Opponents have argued that the archives will disperse the documents among various collections, and thus destroy the unity and context of these records. They have also pointed out that such dispersal would make the excellent Ludwigsburg catalogue useless, and that without a knowledgeable staff of lawyers, no one would be able to explain the collection. Many of these complaints apply equally to the Berlin Document Center. Concerning Ludwigsburg, the judicial authorities have so far, fortunately, been more successful than the State Department in resisting transfer to the German Federal Archives.

Since even the best microfilms are not a substitute for the original documents, I do hope, Mr. Chairman, that the United States can persuade the Germany Government to guarantee the continued operation of the BDC in its present form and with continued access for all American researchers without the imposition of privacy and other limitations on historic documents.

Thank you.

[The prepared statement of Mr. Friedlander appears in the appendix.]

Mr. LANTOS. Thank you, very much, Professor Friedlander. Next, we hear from Mr. Elan Steinberg.

**STATEMENT OF ELAN STEINBERG, EXECUTIVE DIRECTOR,
WORLD JEWISH CONGRESS**

Mr. STEINBERG. Mr. Chairman, I thank you for the opportunity of allowing me to testify on the impending transfer of the Berlin Document Center from U.S. to German control, and wish to commend you on behalf of the World Jewish Congress for the diligence you have shown in pursuing this matter.

The World Jewish Congress is the representative body of Jewish communities in 80 countries, and was founded in 1936 to mobilize the Jewish people and all democratic forces in the face of the looming threat posed by Hitler's Germany. At the Nuremberg War Crimes Tribunal, the WJC served as counsel for Jewish affairs for the American prosecutors. Our concerns regarding the fate of the BDC are, therefore, manifest.

We have heard how many marks the German Government paid to have those documents microfilmed. I would submit the prices we paid to acquire these documents was immeasurably higher. The currency, of course, was the blood of brave young American and Allied soldiers. Our direct experience can serve as an example of what obstacles lay before us if nothing is done before July.

The case in this instance is that of Dr. Hans Joachim Sewering. In 1993, Dr. Sewering, a former head of the German Doctors Guild who runs a medical practice in Dachau near Munich, was to assume office as president of the World Medical Association. Dr. Sewering, however, had been a member of the Nazi SS.

The WJC obtained from the Berlin Document Center a 31-page file on Dr. Sewering's Nazi past, detailing his membership in the Nazi party and the SS. We have provided this to the committee and we hope that you can obtain it—circulate it. The international outcry following these revelations and charges of his involvement in the Nazi euthanasia program forced Dr. Sewering to withdraw from the presidency of the World Medical Association.

That was last year. Under current arrangements for the transfer of the Berlin Document Center, the World Jewish Congress would apparently not have access to the Sewering file after July. German privacy laws would bar that access.

It should be stressed that this is because the Sewering case was not a criminal proceeding. We note in this regard the comments that the Chairman has referred to already by Dieter Kruger, the German archivist who will take charge of the Berlin Document Center. He stated, "I am bound by the law and must protect the privacy of the person for 30 years after his death. I will sometimes have to reject access to original documents." He pointedly added, as the Chairman has already noted, "If someone is only interested in finding out if a politician was a party member, than that is not historically useful."

It might be asked if the matter is moot since microfilm copies will be available here after July. But, that is the problem. Copies

will not be here in July. The users' copy, as we have heard, will not be available for 2 years or more. Until then—putting aside technical questions regarding the quality of microfilm copies—unfettered access to the original documents is imperative.

The World Jewish Congress salutes the Justice Department's Office of Special Investigations for its diligence in ensuring that clauses in the agreement with Germany allows it continued access to the Berlin Document Center. Were it not for OSI's persistence in this matter, even this might have been lost. Unfortunately, scholar, historians, research institutions and journalists are not included under the current arrangements. And if they are not protected, the public at large is not protected.

Mr. Chairman, what we respectfully ask of this committee is nothing less than a writ of protection for the search for historical truth. At a minimum, we would ask your help in securing continued unfettered access to the Berlin Document Center. Certainly, it is not too much to ask that this continue until a complete microfilm users copy of the documents are available, a set which would be scrutinized for acceptability by an independent panel of historians and experts. Until these safeguards are in place, we are shirking our moral and historical responsibility.

Thank you.

[The prepared statement of Mr. Steinberg appears in the appendix.]

Mr. LANTOS. Thank you, very much. I would be pleased to hear from you, Mr. Hordes.

**STATEMENT OF JESS HORDES, WASHINGTON
REPRESENTATIVE, ANTI-DEFAMATION LEAGUE, B'NAI B'RITH**

Mr. HORDES. Thank you, Mr. Chairman.

I am Jess Hordes, the Washington Representative of the Anti-Defamation League. With me is Mr. Michael Lieberman, the Associate Director and Washington counsel. We commend you and Representative Margolies-Mezvinsky for your active efforts to ensure access to the unique collections of the Berlin Document Center.

The BDC safeguards the world's largest and most valuable collection of materials documenting the Third Reich. We appreciate the opportunity to present testimony on this collection and to raise concerns about the prospects for continued open access to its holdings after the United States transfers control of the BDC to Germany in July.

In March, 1990, ADL wrote the State Department to underscore our belief that no action should be taken regarding the BDC which could in any way threaten continued wide scale access by government officials and scholars. The State Department responded, stating its commitment that the BDC would remain under American control until the microfilming of the documents was completed.

Last October, with little fanfare and no advance notice to important interested parties of the terms, as the Chairman has already pointed out, the United States entered into an agreement to relinquish control of the BDC, and transfer management of the records and materials to Germany. We are troubled by doubts recently raised by scholars and researchers about the future status of the

BDC, and we wrote to Secretary Christopher in early April to detail our concerns.

Our preference would have been for the United States to maintain control over the BDC until a completed users' copy of the documents was available in this country. In our opinion, at a minimum during this transitional period, the United States must receive additional assurances from the German Government that investigators, scholars and researchers will continue to have unfettered access to BDC documents.

It is the combination of restrictive German privacy laws, coupled with considerable discretion vested in the German archivists, which makes scholars and researchers most apprehensive about the future trustees of the BDC. Access to the BDC collection for scholars, private investigators and researchers is left to the rules of the German archives, which can place important limitations on the availability of materials.

Moreover, the three-page transfer agreement is silent on the possibility of reorganization of the collection, disbursal of the documents, or even destruction of certain files. A separate verbal note accompanying the agreement provides insufficient assurances, stating merely that the collection will not be moved absent prior consultation.

Almost 50 years after the Second World War, new generations face an era of potential ignorance, complacency and insensitivity that a growing number of Holocaust denial propagandists seek to exploit. Measures to preserve the memory of Hitler's victims and to teach the horrible lessons of intolerance have taken on new importance. Access to the irreplaceable historical records maintained in the BDC, therefore, is more critical than ever.

In sum, our preference would have been for the United States to maintain control over the BDC until a completed users' copy of the documents was available in this country. Short of that, we believe that the United States, at a minimum, should now obtain assurances that the German Government—from the German Government—that during this interim period, the original documents should remain available to all who currently have access to the collections under current BDC rules, and also receive assurances that the files will not be reorganized, disbursed or destroyed without agreement of American authorities.

As an ongoing matter, we also recommend that the U.S. liaison, with German officials, to evaluate the operations of the Center after the transfer and, if necessary, to handle complaints about access should be broadened to include private scholars and investigators in the field. We also urge Congress to continue to maintain an active oversight interest in the operation of the BDC and in issues of access to its unique collections.

Thank you, very much.

[The prepared statement of Mr. Hordes appears in the appendix.]

Mr. LANTOS. Well, I want to thank all four of you for excellent testimony. I have a couple of observations and maybe one question.

First, I would be grateful if the State Department representative could come back to the table because this is an issue that relates to the State Department. As I understand it, this discussion has taken place over a period of many years. We heard earlier testi-

mony that negotiations had begun in the 1960's, and they were restarted, as I understand it, in 1988. Am I correct, Secretary Peters? That was the date you mentioned.

Ms. PETERS. 1988 was the year that the——

Mr. LANTOS. Could you give her the microphone.

Ms. PETERS. Thank you. I believe they were actually recommenced in 1990, sir.

Mr. LANTOS. In 1990. That is fine; that is fine. It would seem to me that with the enormous political changes in Germany—i.e., the reunification of Germany—this negotiation should have been expanded to encompass documents in East Germany. So let me ask specifically: has there been any discussion—during the course of transferring the Berlin Document Center to German jurisdiction and authority, any discussion of a quid pro quo in terms of a German commitment to make available fully and freely all documents relating to the Holocaust, to Nazi party membership, all of the issues that we have been dealing with, all documents that have been discovered or will be discovered in East German—former East German custody? Has that been part of the negotiations?

Ms. PETERS. I do not know, sir, but I will take the question and get back to you.

[The information follows:]

Question. Has there been any discussion, during the course of transferring the Berlin Document Center to German jurisdiction and authority, of a quid pro quo in terms of a German commitment to make available fully and freely all documents relating to the Holocaust, to Nazi Party membership, all of the issues that we have been discovered or will be discovered in East Germany?

Answer. The basic form and provisions of our 1993 turnover agreement were established in the 1980 *ad referendum* document. Our renewal of efforts to transfer the BDC reflected the intervening unification of Germany and its status as a fully sovereign ally. Our focus in the final (1992-1993) negotiations therefore remained on refining and securing terms for the BDC microfilming and turnover.

To our knowledge, access by Holocaust researchers to former GDR holdings of Nazi records did not pose in 1992, nor does it pose today, any unique problem. Nazi personnel-related documents which were located in East Germany are now administered by the German Federal Archives office in Dahlwitz-Hoppegarten (Berlin) and are available to researchers under the rules of access which will apply to the BDC after the July 1 transfer. German archival officials have told BDC Director Marwell that additional Nazi documents obtained in the future from the former Soviet Union or elsewhere in Eastern Europe will be made available to other governments, scholars, and the public under the same access policy that applies to all Federal Archives Nazi holdings.

Mr. LANTOS. I appreciate that. Because, it would seem to me that as the Germans are asking us for a major favor of transferring these priceless and invaluable documents to their jurisdiction, a minimum comment on State Department's move should have been to encompass in the discussions all East German materials.

It does not take a rocket scientist, but there was apparently no one within the State Department who thought of this, unless I am wrong—and I am happy to be, very happy to be proven wrong—to say let us expand the discussion, let us just not talk about the Berlin Document Center, let us talk about parallel documents in the possession of the former East German authorities, and let us make those available in whatever form to the United States. I would be grateful if you would get back to us on that as rapidly as possible.

I would like to ask the panel a couple of questions. And I was very interested in your discussion of the physician, because this was clearly not a criminal case. It was a case of a Nazi who was about to be given the honor of serving as president of the World Medical Association, and your research prevented this from happening. Are any of you familiar with other instances in which German authorities have invoked the data protection laws to prevent historical documents from being released to researchers? I know you have mentioned the very restrictive policies in a number of areas. Professor Giles.

Mr. GILES. I cannot cite specific instances, but I would say that it is generally the case that it is extremely difficult to gain access to these kinds of materials. It has been always much more difficult for German scholars to gain access to materials from the Nazi period and from the Berlin Document Center, itself. And what concerns us now is that we should be placed under the same restrictions.

Mr. LANTOS. Well, let me ask specifically of all of you: are you aware of cases in which Nazi party membership information was withheld from researchers for purposes of political or economic expediency, in addition to the one that we have heard of?

Mr. STEINBERG. Mr. Chairman, if I may address the question coming from the other side. The fact of the matter is because the Berlin Document Center has been in American hands, those kinds of specific problems have not arisen. That is the case in many well-known international personalities whose background we have been able to check by virtue of the fact that American free access to those records have enabled us to do so. I think what we have is the exceptions have not occurred precisely because the system has properly been in place. To use an American expression, "If it ain't broke, don't fix it." I do not know why we are trying to fix something that has not been broken.

Mr. LANTOS. Professor Friedlander.

Mr. FRIEDLANDER. Mr. Chairman, I cannot give specific instances, but the problem, I am afraid, is more subtle and complex than denying information about a certain item. First of all, Nazi party membership is probably only one of a very minor matter that may concern persons who wish to hide. The Berlin Document Center has, after all, also government agency reports. On these, there appear all kinds of things.

To give you an example involving not BDC records, but something as innocuous as research grant applications. They were not available for a long time, but were unearthed during the 1980's in the Federal Archives by Professor Benno Muller-Hill, the geneticist who discovered there the files of the German Research Foundation (The Deutsche Forschungsgemeinschaft), which included that infamous report by Professor Von Verschuer about the research that his student Mengele conducted in Auschwitz. Verschuer was the principle investigator and Mengele was simply getting some of that money to do his research there. Now, that is a totally innocuous kind of material that, nevertheless, reveals important facts. These materials, seemingly pedestrian, pose a problem, because privacy restrictions can be imposed and made to look rational.

So, there are various ways in which we can be restricted. And all of us have had experience here and there, concerning such restrictions. And, therefore, we might suspect—just as the State Department suspects that conditions will continue and will improve, we may suspect that given conditions and trends in the new Germany, and certain precedence on privacy that they may deteriorate. We are playing roulette with this material. We do not know and no one can tell what 10 years from now will be the rules under which these documents will operate.

Mr. LANTOS. I fully agree with you. Well, let me just say in conclusion that it is my earnest hope that in the time available to us—and we still have the whole month of May and June—a satisfactory written resolution, contractual resolution of all of these issues raised will be reached between the German and the American Governments. It is my earnest hope that it will be done without congressional action, and it will be done in a manner which is satisfactory to those of us in the Congress who feel that the Congress should have been consulted prior to the signing of the original agreement.

I hope this will be the case, and we will be communicating with the Department of State and the Department of Justice with a comprehensive list of items that will need to be covered with a side agreement of equal weight. It is my judgment that it is in the U.S. national interest and it is in the German national interest to handle this matter harmoniously, amicably, and expeditiously.

If that should prove not to be the case, then congressional action may have to be taken. I do not think it is in the interest of the German Government to have a major congressional debate on Germany's Nazi past and the question of possible unwillingness to make available materials to organizations, individuals, scholars, researchers, affected parties in the United States or elsewhere.

Germany, in particular, has a great interest in having this transfer take place expeditiously and harmoniously and without any residue of questions or rancor. Therefore, I will attempt, through Deputy Secretary of State Strobe Talbott and the Secretary of State, to get an assurance—as well as through our Ambassador in Bonn, to get an assurance that instantly procedures will be put in place to address the issues that this hearing dealt with. We are dealing with two very competent governments who are approaching this issue, I am sure, with the best of goodwill.

But the clock is ticking. It is now still April. This agreement is supposed to come into effect on what date—July 1, so we have 2 months. Well, we really do not have 2 months, we have much less than 2 months to have a subsidiary agreement concluded, because congressional action will need some time. So, we will not wait until July 1 to confront the fait accompli. We will wait until June 1, which provides the Department of State a full month to deal with this issue.

I will be very happy—and I hope you will take this back to Secretary Christopher—to be briefed just prior to June 1, with my colleagues who are interested in this matter, and review the draft of a subsidiary, supplemental, secondary, additional agreement that is proposed to be signed by the two parties. The State Department may have to work fast. But, it could have avoided this problem had

they consulted Congress, and relevant researchers and organizations such as the groups represented here earlier. Since that was not the case, I am still hoping to resolve the matter amicably, harmoniously, but it has—will have to be resolved expeditiously and to our satisfaction.

The alternative is for this issue to go very public with all of the concerns and all of the issues fully debated on the floor of the House of Representatives, and I am sure the floor of the Senate.

I want to thank all of our witnesses, both this panel and the previous panel. I think it was an extremely informative and useful hearing. I want to thank the private witnesses, and the Department of State, and Justice and the National Archives for their cooperation, and look forward to resolving this issue prior to June 1.

This hearing is adjourned.

[Whereupon, at 12:22 p.m., the subcommittee was adjourned to reconvene at the call of the Chair.]



APPENDIX

PREPARED BY THE U.S. DEPARTMENT OF STATE

Access to Holdings of the Berlin Document Center

What is the BDC?

The Berlin Document Center (BDC) is the largest repository of personnel and membership records of the Nazi Party (NSDAP) and its affiliated organizations. From July 1945 until October 1953, Nazi Party records captured by the Western Allies were consolidated at the BDC under the authority of the U.S. Army for use in war crimes and denazification trials. Since October 1953, the BDC has been under the jurisdiction of the Department of State, directly subordinate to, first, the United States Mission in (West) Berlin and, since German unification, Embassy Office Berlin. Throughout this history, the Federal Republic of Germany (FRG) has borne the expenses of operating the BDC.

The records at the BDC contain both biographical files and nonbiographical materials. The biographical files, which make up the bulk of the collection, contain Nazi Party membership records and personnel records of the SS, SA, and other affiliated party and state agencies.

The BDC Research Collection constitutes the only nonbiographical records still held at the BDC. All other nonbiographical Nazi records that were once held in the BDC were transferred to the FRG Government during the period 1959-62 pursuant to bilateral agreements between Germany and the United States, Great Britain, and France. Much of the returned material was microfilmed at the time under the auspices of the American Historical Society or the Hoover Institution and has been readily available to scholars in the United States.

Under a separate agreement (the Hallstein-Dowling exchange of notes, 1956), German Foreign Ministry files (distinct from Nazi Party records) were turned over to the Foreign Ministry during the period 1956-58. These were subject to selective U.S. microfilming, which on privacy grounds excluded personnel files. While German Foreign Ministry archivists have declined to release these personnel files, they have routinely answered specific questions from scholars about their contents.

Included in the records still held by the BDC are:

- Approximately 11 million NSDAP membership cards created and maintained by party headquarters. This collection is believed to constitute 90 percent of all such cards created by the NSDAP;
- personnel files of SS officers;
- documents pertaining to rank-and-file SS members;
- and, documents relating to other NSDAP-affiliated organizations, both para-military and civil.

Background to the Turnover

State Department records indicate our intention as of 1952 to transfer captured German documents to Bonn's control in order "to promote friendly relations with the Federal Republic of Germany on a normal basis." Those documents whose release could endanger national security or whose contents dealt with the Nazi Party were to remain in U.S. control, "except where such transfer would not jeopardize the democratic way of life in the Federal Republic." The U.S. and FRG Governments have discussed the transfer of the BDC periodically since 1967. Our policy since 1980 has been guided by a bilateral ad referendum agreement which provided for the turnover when microfilming of all BDC records had been accomplished.

Following a unanimous 1989 resolution of the German Bundestag requesting the immediate transfer, renewed negotiations culminated in the October 1993 agreement, under which we will transfer to Germany title and control of the German documentary materials contained in the BDC. This transfer is to occur on July 1, 1994, by which time the BDC will have microfilmed, at German expense, all of the BDC records and transferred the microfilms to the U.S. National Archives and Records Administration (NARA).

Thus far in the microfilming project, over 52 million exposures have been made. The BDC's system of "finding aids," which facilitate research, is being reproduced, and a computer data base of the files is also being created. Some original documents are receiving preservation treatment and are being restored when necessary.

Upon completion of the project, the NARA will possess one of the two complete sets of microfilm currently in production (the German National Archives will receive the other set) and will begin making a set for use by public researchers. NARA officials have already begun to examine the 32 series of documents (as organized by the BDC's creators) for the purpose of identifying those series that merit the earliest release for researchers.

Access in Germany

Our agreement with Germany assures the U.S. Government of continued access to original documents held in the BDC for the official purposes that have characterized our use of the Center heretofore, namely: (1) the purposes of comparing originals with microfilm copies and producing additional copies; (2) forensic purposes; and (3) judicial evidentiary purposes. The Justice Department's Office of Special Investigations and State

Department consular officials will continue to have full and timely access to records required in enforcing U.S. immigration law provisions against former members of Nazi-affiliated organizations. Judicial officials in the United States will be able to receive from Germany and hold for a reasonable time any original documents that pertain to war crimes, other criminal, or civil actions before courts here.

Many of the fears concerning access to BDC originals are unfounded or based on bad experiences in the past with a system that is no longer in place or that will not apply to BDC access questions. Privacy considerations will limit access, as they have under the U.S. stewardship, but not in the case of scholarly research treating persons in the public eye. Since Germany's adoption of a new federal archives law in 1988, German nationals who desire access to BDC documents have had to apply to the German Federal Archives (Bundesarchiv). The Bundesarchiv indicates whether it has any objections to access. BDC management has been in a position, therefore, to monitor how the Bundesarchiv applies its discretion under the German law. The Bundesarchiv has established an excellent track record of openness and accessibility. In 1993, for instance, it posed no objections to access to BDC documents in the 863 cases involving German citizen requests.

The turnover agreement provides that "public access to the documents in the Berlin Document Center and the microfilm copies in the National Archives of the United States of America shall be in accordance with the rules of the respective archives." It provides also for a U.S. Government Berlin Document Center Liaison Officer, a diplomatic member of our Embassy Office in Berlin, who will be responsible "for representing American interests in access to the documents until the American copy of the microfilm is fully accessible in the United States of America." Ambassador Holbrooke has assigned this important role to our principal officer in Berlin.

Pursuant to internationally-recognized archival principles, German authorities may undertake in the future to reorganize some BDC holdings from their current biographic ordering in an attempt to restore the files to their original provenance. Such a reorganization, if undertaken, would be incomplete and misguided without a concordance that would permit the German authorities to reconstruct the BDC biographic organization. Some of the BDC collections may at some point be distributed or consolidated to complement or complete existing collections held in Germany. However, per the Note Verbale accompanying our agreement, "collections contained within the Berlin Document Center will not be moved from their current location absent prior consultation with the United States authorities and . . . the Agreement will continue to pertain to the documents . . . wherever they may eventually be located."

Access in the United States

No microfilming project of this kind and scale has ever taken place before. It is the result of careful planning and produces films of the highest quality. (This state-of-the-art project has been highly praised by international specialists, and the BDC consults regularly with German agencies and archives that are planning similar projects.) The U.S. National Archives is satisfied that microfilm as a medium is capable of rendering faithful copies of BDC documents. We know of no instances of BDC documents that could not be microfilmed legibly due to lack of contrast. As with anything involving human beings that is the product of literally tens of millions of single actions, the microfilm produced by the BDC will likely contain some errors (a carefully-planned quality assurance program is designed to identify and correct all but the most random and isolated ones). Any system designed to check the completeness of each individual frame of microfilm would entail staggering cost. Our agreement with Germany provides for access to the originals for the purpose of correcting whatever errors may have crept into films.

The NARA will review for release by Autumn 1994 those series of microfilmed BDC files that are now most actively studied, namely, SS officers' personnel files and the NSDAP master membership files. The Archives intends to open access to the 32 series on a rolling basis, as the user microfilm copies of each series are produced, over an expected two years or less starting July 1, 1994.

Chronology

- April 1945 Large caches of Nazi Party documents intended for destruction are discovered at a paper mill near Munich, in a salt mine near Berchtesgarden, and at other locations in Germany. These are consolidated in Berlin with other captured documents under the supervision of U.S. military authorities.
- 1948-49 Captured German Foreign Ministry records, including many that predated the Nazi regime, are removed from Berlin during the airlift and stored at Whaddon Hall, England. The transfer of these documents, which were not BDC holdings, to FRG control was later the subject of the 1956 Hallstein-Dowling exchange of notes and analogous agreements with Great Britain and France.
- October 1952 Nearing the close of war crimes trials and denazification actions, the USG establishes its intention to return seized German documents. Those documents whose release could endanger national security or whose contents dealt with the Nazi Party are to remain in U.S. control, "except where such transfer would not jeopardize the democratic way of life in the Federal Republic."
- March 1967 The BDC's possession of information on Chancellor Kiesinger's Nazi past is publicized and causes tension in U.S.-FRG relations. Consultations with the FRG, Britain, and France on placing the BDC under German supervision begin but deadlock in 1968 due to U.S. concern over private scholars' access to the holdings. At the time, only three of the BDC's 32 Biographic Collections ("series") have been microfilmed in their entirety.
- 1968-1972 Further BDC collections are microfilmed.
- June 1979 Formal negotiations convene in Berlin and lead in 1980 Washington talks to an ad referendum agreement, never formalized, under which the FRG and U.S. agree in principle that the BDC should be transferred to FRG control when microfilming of its entire holdings is accomplished.

- 1987-88 A large-scale theft of BDC documents is discovered. The resulting focus on the BDC reveals many perceived weaknesses in security and management which become the subject of German Bundestag hearings. Some documents are recovered and security at the BDC is improved. The return of the BDC again becomes an issue.
- 1988 Planning begins for resumption of the microfilming project. The FRG Government guarantees complete funding. Microfilming resumes in June 1989.
- April 1989 The Bundestag resolves unanimously that the BDC should be transferred to German control. Informal discussions of a turnover resume.
- October 1992 Acting Secretary of State Kanter approves Circular 175 authority to carry out the concluding negotiations concerning the transfer. An accompanying memorandum of law identifies the statutory authority (44 U.S.C. Section 3302; 36 CFR Section 1228.60) to turn over title to the BDC's holdings to the FRG.
- June 1993 Negotiations conclude. State Department officials continue to consult with NARA and with interested private groups on the projected turnover. Embassy Bonn staff also in consultation with the U.S. Holocaust Museum and other parties.
- October 1993 Agreement is signed in Berlin October 18, 1993, accompanied by a Note Verbale treating employment terms for German BDC employees, official USG access, and the need for U.S.-FRG consultation prior to the removal of BDC holdings to another location.
- December 1993 Congress notified of the agreement and provided a precis of its contents, pursuant to the Case-Zablocki Act.

Agreement

between

the Government of the United States of America

and

the Government of the Federal Republic of Germany

Concerning

the Transfer of the Berlin Document Center

to the Federal Republic of Germany

The Government of the United States of America and the Government of the Federal Republic of Germany have agreed as follows:

Article 1

(1) The Government of the United States of America shall transfer title and control of the German documentary materials contained in the Berlin Document Center (hereinafter referred to as "the documents") to the Federal Republic of Germany on July 1, 1994. Administrative responsibility for the documents shall thereafter be exercised by the Bundesarchiv.

(2) The documents shall be handed over as existing at the time of the transfer according to a list to be drawn up by the Government of the United States of America.

Article 2

In preparation for the transfer, the Government of the Federal Republic of Germany shall appoint a transition director, who shall cooperate with the director of the Berlin Document Center to facilitate a smooth transfer. The director of the Berlin Document Center shall provide the transition director with office space on the premises of the Berlin Document Center.

Article 3

(1) Subject to the requirements of the relevant German statutes and tariff agreements and the availability of funds in the German budget, the Government of the Federal Republic of Germany shall take the necessary steps to employ the current employees of the Berlin Document Center so as to minimize any loss in pay or social security benefits.

(2) After signature of this Agreement, the Bundesarchiv shall, through the transition director, advise current Berlin Document Center staff on the principles and procedures relevant to the staff members' future employment with the Bundesarchiv.

(3) Taking into account current positions, the Bundesarchiv shall, by October 31, 1993, draw up a staffing plan for the Berlin Document Center and make it available to the staff. This plan shall contain job descriptions and pay grades. It shall indicate the extent to which additional training is recommended for individual staff members.

Article 4

(1) The microfilming project shall be completed by July 1, 1994.

(2) Upon transfer of the Berlin Document Center, the United States Embassy Office, Berlin, shall designate a Berlin Document Center Liaison Officer who shall be responsible for ensuring a smooth transition and for representing American interests in access to the documents until the American copy of the microfilm is fully accessible in the United States of America. German officials of the Berlin Document Center shall, during this interim period, provide access to information requested by United States authorities contained in the documents to the same extent as now enjoyed by those authorities.

Article 5

(1) Following the transfer of the Berlin Document Center to the Federal Republic of Germany, the Government of the United States of America shall continue whenever necessary to have access to the documents:

1. for the purpose of comparing the original documents with the microfilm records and making additional copies as required,

2. for forensic purposes, and,

3. for judicial evidentiary purposes.

(2) Requested original documents shall be expeditiously transferred to the requesting American authorities in the United States of America. The documents shall be returned after a reasonable period. For these purposes, no distinction shall be drawn between requests regarding civil or criminal actions.

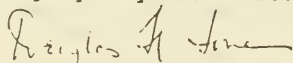
Article 6

Subsequent to the transfer of the Berlin Document Center, public access to the documents in the Berlin Document Center and the microfilm copies in the National Archives of the United States of America shall be in accordance with the rules of the respective archives.

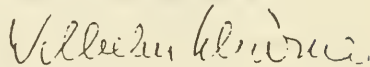
Article 7

This agreement shall enter into force on the day of signature.

done at Berlin this 18th day of October 1993, in duplicate in the English and German languages, both texts being equally authentic.



FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF THE
FEDERAL REPUBLIC OF GERMANY:

American Embassy Bonn note to the German
Ministry of Foreign Affairs

No 609

The Embassy of the United States of America presents its compliments to the Federal Foreign Office of the Federal Republic of Germany and has the honor to refer to the Agreement of October 18, 1993 between the Government of the United States of America and the Government of the Federal Republic of Germany concerning the transfer of the Berlin Document Center (BDC) to the Federal Republic of Germany. In connection with the signature of this agreement, the Government of the United States of America wishes to propose to the Government of the Federal Republic of Germany the following understandings:

1. With respect to Article 3 (1) of the Agreement, it is understood that BDC employees who are offered posts with the Bundesarchiv will be given credit pursuant to Article 19, para. 1 of the Bundesangestelltentarif (BAT) for periods of employment as BDC employees. Any such BDC employee whose creditable period of employment exceeds 15 years will thus not be subject to removal. Employees transferred from the BDC to the Bundesarchiv will be paid, in excess of the agreed wage scale, individual allowances amounting to the difference between the previous remuneration/wage paid by the BDC

and the remuneration/wage they receive from the Bundesarchiv under the BAT/Manteltarifvertrag des Bundes (MTB). These allowances will be reduced by subsequent general increases under the BAT/MTB as well as by any higher income from higher groupings. Periods of employment with the BDC shall be credited as probationary periods or periods required to obtain promotion, provided that all other work requirements are fulfilled. Any BDC employees not offered acceptable posts with the Bundesarchiv will continue to be subject to the Berlin Tariff Agreement (Tarifvertrag Berlin II), the Tariff on Social Security (Tarifvertrag soziale Sicherung) and the Out of Tariff Agreement on Social Benefits (Ausser tarifliche Regelung zusaetzlicher Sozialleistungen) of 1991.

2. With respect to access pursuant to Article 4 (2) of the Agreement by United States authorities to the information contained in the documents in the Berlin Document Center during the interim period between transfer of the Center to German administration and full availability of the United States' copy of the microfilm in the United States of America, it is understood that:

German authorities will make every effort to provide record checks requested by the Liaison Officer or other designated representative of the Government of the United States of America to him within five working days of the request;

German authorities will respond as expeditiously as possible to emergency requests by United States authorities for record checks, responding within twenty-four hours by telefacsimile, if possible;

German authorities will provide certified copies of documents contained within the Berlin Document Center's collections within ten days of requests from the Liaison Officer or other designated representative of the Government of the United States of America.

It is understood that the foregoing three understandings are consistent with German law.

The Government of the United States of America for its part will make every effort to minimize the length of the interim period as well as the burden placed on the Bundesarchiv to respond to requests for assistance made under this paragraph.

3. Finally, it is understood that the collections contained within the Berlin Document Center will not be moved from their current location absent prior consultation with United States authorities and that the Agreement will continue to pertain to the documents transferred pursuant to Article 1 wherever they may eventually be located.

If the Government of the Federal Republic of Germany agrees with the understandings set forth herein, the Embassy has the honor to propose that this note and a note to that effect confirming the agreement of the Government of the Federal Republic of Germany shall constitute an agreement between the Government of the United States of America and the Government of the Federal Republic of Germany, which shall enter into force on the date of the note of confirmation.

The Embassy of the United States of America takes this opportunity to renew to the Federal Foreign Office the assurance of its highest consideration.

Embassy of the United States of America,

Bonn-Bad Godesberg, October 18, 1993.



Informal Embassy Translation of German Foreign Ministry note.

The Federal Foreign Office is honored to receive the Verbal Note from the United States of America of October 18, 1993 the agreed German text of which is as follows:

"The Embassy of the United States of America presents its compliments to the Federal Foreign Office of the Federal Republic of Germany and has the honor to refer to the Agreement of October 18, 1993 between the Government of the United States of America and the Government of the Federal Republic of Germany concerning the transfer of the Berlin Document Center (BDC) to the Federal Republic of Germany. In connection with the signature of this agreement, the Government of the United States of America wishes to propose to the Government of the Federal Republic of Germany the following understandings:

1. With respect to Article 3 (1) of the Agreement, it is understood that BDC employees who are offered posts with the Bundesarchiv will be given credit pursuant to Article 19, para. 1 of the Bundesangestelltentarif (BAT) for periods of employment as BDC employees. Any such BDC employee whose creditable period of employment exceeds 15 years will thus not be subject to removal. Employees transferred from the BDC to the Bundesarchiv will be paid, in excess of the agreed wage scale, individual allowances amounting to the difference between the previous remuneration/wage paid by the BDC and the remuneration/wage they receive from the Bundesarchiv under the BAT/Manteltarifvertrag des Bundes (MTB). These allowances will be reduced by subsequent general increases under the BAT/MTB as well as by any higher income from higher groupings. Periods of employment with the BDC shall be credited as probationary periods or periods required to obtain promotion, provided that all other work requirements are fulfilled. Any BDC employees not offered acceptable posts with the Bundesarchiv will continue to be subject to the Berlin Tariff Agreement (Tarifvertrag Berlin II), the Tariff on Social Security (Tarifvertrag soziale Sicherung) and the Out of Tariff Agreement on Social Benefits (Aussertarifliche Regelung zusätzlicher Sozialleistungen) of 1991.

2. With respect to access pursuant to Article 4 (2) of the Agreement by United States authorities to the information contained in the documents in the Berlin Document Center during the interim period between transfer of the center to German administration and full availability of the United States' copy of the microfilm in the United States of America, it is understood that:

German authorities will make every effort to provide record checks requested by the Liaison Officer or other designated representative of the Government of the United States of America to him within five working days of the request;

German authorities will respond as expeditiously as possible to emergency requests by United States authorities for record checks, responding within twenty-four hours by telefacsimile, if possible;

German authorities will provide certified copies of documents contained within the Berlin Document Center's collections within ten days of requests from the Liaison Officer or other designated representative of the Government of the United States of America.

It is understood that the foregoing three understandings are consistent with German law.

The Government of the United States of America for its part will make every effort to minimize the length of the interim period as well as the burden placed on the Bundesarchiv to respond to requests for assistance made under this paragraph.

3. Finally, it is understood that the collections contained within the Berlin Document Center will not be moved from their current location absent prior consultation with United States authorities and that the Agreement will continue to pertain to the documents transferred pursuant to Article 1 wherever they may eventually be located.

If the Government of the Federal Republic of Germany agrees with the understandings set forth herein, the Embassy has the honor to propose that

this note and a note to that effect confirming the agreement of the Government of the Federal Republic of Germany shall constitute an agreement between the Government of the United States of America and the Government of the Federal Republic of Germany, which shall enter into force on the date of the note of confirmation."

The Foreign Office is honored to inform the Embassy of the United States of America that the Government of the Federal Republic of Germany agrees to the understandings proposed by the Government of the United States of America. Accordingly, the Verbal Note from the Embassy of the United States of America of October 18, 1993 and this answering Note constitute an agreement between the Government of the Federal Republic of Germany and the Government of the United States of America, which comes into effect today.

The Foreign Office takes this opportunity to renew to the Embassy of the United States of America the assurance of its highest consideration.



United States Department of State

Washington, D.C. 20520

JUN 20 1994

Dear Mr. Chairman:

I am writing to provide you the enclosed copies of an exchange of letters regarding the Berlin Document Center (BDC) between Ambassador Richard Holbrooke and the German Foreign Ministry's State Secretary, Dr. Dieter Kastrup. These letters clarify procedures for non-official access and the disposition of original documents after we transfer title and control of the BDC's documentary records to Germany.

Following the hearing that you held April 28 to examine public and Congressional concerns about the BDC turnover, Department officials were pleased to work with your staff on the means to address those concerns. On June 1 we briefed Mr. King and Ms. Nelson on our progress toward concluding this exchange of letters and on German Chancellor Kohl's assurances to Mr. Israel Singer of the World Jewish Congress. We were pleased to learn that you may wish to enter these documents in the Congressional Record to reflect the resolution of the issues raised in your April 28 hearing.

We trust you will agree that our consultations with Germany have resulted in a firm political commitment and clearer interpretation of German archival policy in implementing our October 1993 agreement. Please do not hesitate to contact us again if we may be of further assistance on this or other issues before the Congress.

Sincerely,

Wendy R. Sherman
Assistant Secretary
Legislative Affairs

The Honorable
Tom Lantos,
Chairman, Subcommittee on International
Security, International Organizations
and Human Rights,
Committee on Foreign Affairs,
House of Representatives.

EMBASSY OF THE
UNITED STATES OF AMERICA
BONN

THE AMBASSADOR

May 26, 1994

Dr. Dieter Kastrup
State Secretary
Federal Foreign Office
Bonn, Germany

Dear Dr. Kastrup:

I am writing with reference to the Agreement of October 18, 1993 between our two governments concerning the transfer of the Berlin Document Center to the Federal Republic of Germany.

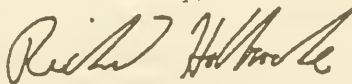
As you are aware, concerns have been raised in the United States, including in the Congress, regarding access to documents in the Center by non-official users during the period between the transfer on July 1, 1994 and the time when microfilms become available for use at the U.S. National Archives in Washington, D.C. This issue was also a topic of conversation during the meeting earlier this month between Chancellor Kohl and representatives of the World Jewish Congress in Bonn and was addressed in the statement released subsequently by the Chancellery on the meeting.

In order to address these concerns, I would appreciate confirmation of our understanding that access to documents in the Center by non-official users following the July 1, 1994 transfer will be under terms no less favorable than those presently in effect at the Center. I note that the agreement provides for a U.S. liaison officer who will be able as well to address and resolve with representatives of your Government any questions which might arise regarding access in specific cases. I would also appreciate confirmation that the current holdings of the Center will be retained and will not be dispersed or reorganized in ways which would make them less accessible than they currently are.

Thank you for your cooperation in resolving this issue.

With best regards,

Sincerely,



Richard C. Holbrooke

INFORMAL EMBASSY TRANSLATION

The State Secretary
of the Foreign Office
Dr. Dieter Kastrup

Bonn, June 1, 1994

His Excellency
The Ambassador of the United States of America
Mr. Richard C. Holbrooke
Deichmanns Aue 29
53170 Bonn

Dear Mr. Ambassador:

Thank you for your letter of May 26, 1994 concerning German-American Agreement of October 18, 1993, on the Transfer of the Berlin Document Center (BDC) to the Federal Republic of Germany.

Concerning your questions, I would like to inform you of the following:

Requests from Germans for access to documents were handled liberally and pragmatically in the past. This practice will be continued following July 1, 1994, equally for domestic and foreign applicants.

The American Liaison Officer provided for in Article 4.2 of the agreement may at any time contact the responsible supervisory authority for the Federal Archives, the Federal Ministry of Interior, in order to discuss questions of access in specific cases.

Finally, I can confirm to you that all documents in the BDC will be preserved and remain accessible in the same fashion as they exist at the time of transfer according to a catalog to be compiled by the Government of the United States.

Sincerely yours,

/signed/ Dieter Kastrup

DER STAATSSSEKRETÄR
DES AUSWÄRTIGEN AMTS
Dr. Dieter Kastrup

Bonn, den 01. Juni 1994

Seiner Exzellenz
dem Botschafter der
Vereinigten Staaten von Amerika
Herrn Richard C. Holbrooke
Deichmanns Aue 29

53170 B o n n

Sehr geehrter Herr Botschafter,

vielen Dank für Ihr Schreiben vom 26. Mai 1994 zum deutsch-amerikanischen Abkommen vom 18. Oktober 1993 über die Übertragung der Berliner Dokumentenzentrale (BDC) auf die Bundesrepublik Deutschland.

Zu Ihren Fragen möchte ich Ihnen folgendes mitteilen:

Anträge von Deutschen auf Zugang zu den Dokumenten sind in der Vergangenheit liberal und pragmatisch behandelt worden. Diese Praxis wird nach dem 01. Juli 1994 in gleicher Weise für In- und Ausländer fortgeführt werden.

Der in Artikel 4.2 des Abkommens vorgesehene amerikanische Verbindungsbeauftragte hat jederzeit die Möglichkeit, sich mit der für das Bundesarchiv zuständigen Aufsichtsbehörde, dem Bundesministerium des Innern, in Verbindung zu setzen, um Fragen des Zugangs in speziellen Fällen zu besprechen.

Schließlich kann ich Ihnen bestätigen, daß alle Dokumente im BDC so erhalten und zugänglich bleiben, wie sie entsprechend einem von der Regierung der Vereinigten Staaten von Amerika zu erstellenden Verzeichnis zum Zeitpunkt der Übergabe vorhanden sind.

Mit freundlichen Grüßen

Mr

Mr. Murphy

U.S. HOUSE OF REPRESENTATIVES
 COMMITTEE ON INTERNATIONAL SECURITY, INTERNATIONAL ORGANIZATIONS, AND HUMAN RIGHTS

Our Hundred Third Congress
Congress of the United States
 Committee on Foreign Affairs
 House of Representatives
 Washington, DC 20515

June 30, 1994

The Honorable Richard C. Holbrooke
 Ambassador
 Embassy of the United States of America
 Bonn, Germany

Dear Richard:

As we discussed by telephone today, I have a copy of your letter of May 26 to German State Secretary Dieter Kasrup concerning the Berlin Document Center. Regrettably, Dr. Kasrup's reply of June 1 does not address the core issue raised at the Subcommittee's recent hearing.

Our concern is that during the interim period before a reader's copy of the microfilm is available in the U.S., German administration of the more restrictive access rules of the Federal Archives may limit access by non-official users. Indeed, your letter specifically advised the Germans that we requested "confirmation of our understanding that access to documents in the Center by non-official users following the July 1, 1994, transfer will be under terms no less favorable than those presently in effect at the Center." Dr. Kasrup's vague reply does not provide the assurances in the terms your letter lays out so clearly.

During the past few months, I have consistently and conscientiously not discussed this transfer with the press, but I must tell you I am under strong pressure from other Members of Congress and other concerned individuals. If we are not able to resolve this issue, the controversy will surely escalate. After the House returns from its July recess, additional hearings about access at the Berlin Document Center are a real likelihood. Similarly, Members may consider proposing amendments about the Center to pending legislation, which may trigger extensive floor debate about Germany's Nazi past.

I know we both hope to avoid such developments.

Most cordially,


 TOM LANTOS

Chairman, Subcommittee on International Security, International Organizations, and Human Rights

WILLIAM F. CLARK
 JAMES A. LEAHY
 JERRY M. RUBIN
 CLYDE A. DICKER
 GARY A. JOYCE
 JOHN SCHWARTZ
 CHRISTOPHER H. SMITH
 JIM WATSON
 JIM WATSON
 ALTON S. GALE
 CAROL ROSENTHAL
 GARY A. LEAHY
 JERRY M. RUBIN
 CLYDE A. DICKER
 GARY A. JOYCE

THE HONORABLE
 RICHARD C. HOLBROOKE

EMBASSY OF THE
UNITED STATES OF AMERICA
BONN

THE AMBASSADOR

July 7, 1994

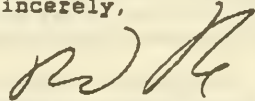
The Honorable Joachim Bitterlich
Security and Foreign Policy Advisor
Bundeskanzleramt
Abteilungsbau 2
Adenauerallee 139-141
53113 Bonn

Dear Joachim:

I am transmitting to you for the Chancellor a letter from Congressman Tom Lantos concerning the Berlin Document Center.

As you know, we have been working closely with Congressman Lantos and other concerned Americans on this important issue. The Congressman is considering holding hearings on the subject in the near future. We would greatly appreciate it if your government could consider this letter and assist us as an urgent matter.

Sincerely,



Richard C. Holbrooke

Enclosure: as stated

EMBASSY OF THE
UNITED STATES OF AMERICA
BONN

THE AMBASSADOR

July 7, 1994

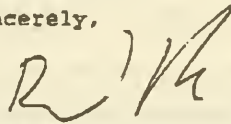
The Honorable Dieter Kastrup
State Secretary
Auswärtiges Amt
Adenauerallee 99-103
53113 Bonn

Dear Dieter:

I am transmitting to you for the Chancellor and the Foreign Minister a letter from Congressman Tom Lantos concerning the Berlin Document Center.

As you know, we have been working closely with Congressman Lantos and other concerned Americans on this important issue. The Congressman is considering holding hearings on the subject in the near future. We would greatly appreciate it if your government could consider this letter and assist us as an urgent matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. H.', with a stylized flourish extending from the 'H'.

Richard C. Holbrooke

Enclosure: as stated

Informal Embassy Translation

July 14, 1994

His Excellency
 The Ambassador of the
 United States of America
 Richard C. Holbrooke
 Deichmanns Ave 29
 53170 Bonn

Dear Dick:

Thank you for your letter of July 7, 1994 referring to the transfer of the Berlin Document Center (BDC) to the Federal Republic of Germany.

The concerns of Congressman Lantos concerning the German regulations for access are not warranted, since the Federal Archives coordination with the BDC has so far handled requests for access by private German users very generously. Since 1991, only one out of 863 requests has been denied. In the future, this practice will continue to be fully applied to private foreign requesters as well as to Germans.

The Secretary General of the World Jewish Congress, Mr. Singer, assured Ambassador Stabreit in a meeting on June 28, 1994, that our explanations concerning regulations for access to the BDC were able to dispel concerns that Germany would complicate or prevent future use of the archives.

During a German-American Parliamentarians' meeting organized by the Aspen Institute from August 22 to 24, 1994, in Berlin, Congressman Lantos will have the opportunity to visit the BDC and to inform himself on the current liberal regulations for access. I am convinced he will find that his concerns are groundless.

Sincerely,

/s/

Dieter Kastrup

DER STAATSSSEKRETÄR
DES AUSWÄRTIGEN AMTS
Dr. Dieter Kastrup

Bonn, 11. Juli 1994

Seiner Exzellenz
dem Botschafter der
Vereinigten Staaten von Amerika
Herrn Richard C. Holbrooke
Deichmanns Aue 29

53170 Bonn

Lieber Dick,

vielen Dank für Ihr Schreiben vom 7. Juli 1994, mit dem Sie erneut die Übertragung der Berliner Dokumentenzentrale (BDC) auf die Bundesrepublik Deutschland ansprechen.

Die Bedenken des Kongreßabgeordneten Lantos gegen die deutschen Zugangsregeln sind nicht berechtigt, da das Bundesarchiv bisher in Abstimmung mit dem BDC die Anträge privater deutscher Nutzer auf Zugang außerordentlich großzügig beschieden hat. Seit 1991 ist von 863 Anträgen nur 1 Antrag abgelehnt worden. Diese Praxis wird in Zukunft für private ausländische Nutzer in vollem Umfang ebenso wie für Deutsche weitergelten.

Der Generalsekretär des World Jewish Congress, Herr Singer, hat Botschafter Stabreit in einem Gespräch am 28.06.1994 versichert, unsere Erklärungen über die Zugangsregelungen zum BDC seien

geeignet, Befürchtungen zu zerstreuen, Deutschland werde die künftige Nutzung des Archivs erschweren oder unmöglich machen.

Herr Abgeordneter Lantos wird die Möglichkeit haben, bei einem vom Aspen Institut veranstalteten amerikanisch-deutschen Parlamentariertreffen vom 22. bis zum 24.08.1994 in Berlin das BDC zu besuchen und sich über die jetzt geltenden großzügigen Zugangsregelungen unterrichten zu lassen. Ich bin überzeugt, daß er dabei feststellen wird, daß seine Bedenken unbegründet sind.

Mit freundlichen Grüßen

Mit Ulf:

WILLIAM F. GOODLING Pennsylvania
JAMES A. LEACH Texas
TERRY ROTH Wisconsin
OLYMPIA J. SHOWNE New Mexico
HENRY J. HYDE Kansas
DOUG BENNETT Nebraska
CHRISTOPHER M. SMITH New Jersey
JAN BURTON Indiana
JAN MEYER Kansas
ELTON GALLEGLY California
LESLIE ROSENTHINE Florida
CASS BALLINGER North Carolina
DANA ROSENBAUM California
DAVID A. LEVY New York
DONALD A. MANZULLO Illinois
LINDSEY DIAZ BALART Florida
EDWARD R. ROYCE California

In view of the unwillingness of the German Foreign Ministry to provide the assurances that I specifically requested in response to concerns raised during the hearing of the Subcommittee on International Security, International

Organizations and Human Rights earlier this year, I intend to monitor very closely and completely all questions regarding access to the BDC. I will send a special Subcommittee monitoring team to Berlin within a few months to visit the BDC. I will also hold another hearing of the Subcommittee early next year to review German access policies following the transfer of the BDC to German control. I would hope that when this hearing is held you will testify on this issue before the Subcommittee in your new capacity as Assistant Secretary of State for European and Canadian Affairs.

If there are any difficulties or problems with regard to access by journalists, scholars, Nazi-hunters, and other non-government individuals at the BDC, German archive policies and Germany's Nazi past will be fully and publicly debated in the Congress.

Again, I am most grateful for your assistance in this matter. I only regret that German officials have not been more responsive.

Cordially,

A handwritten signature in dark ink, reading "Tom Lantos". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tom Lantos
Member of Congress

EMBASSY OF THE
UNITED STATES OF AMERICA
BONN

THE AMBASSADOR

August 10, 1994

Dear Tom,

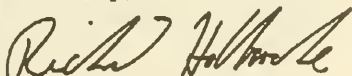
Thank you for your letter of August 5 and for your kind acknowledgment of our efforts on the issue of non-official access to the Berlin Document Center.

In the months since your Subcommittee's hearing on this matter, I feel that we gained from the Chancellor and Foreign Ministry a serious commitment to keep access unproblematic for all non-official users of the BDC, including those categories of persons you cite. I regret deeply that you find inadequate the specific undertakings expressed in State Secretary Kastrup's letter.

In order to keep the pressure on and deal with your continued concerns, I would welcome your proposal to create a monitoring team to visit the BDC under Subcommittee auspices and to hold a review hearing in 1995. Should I be confirmed by the Senate as Assistant Secretary for European and Canadian Affairs, I will ensure the Department's full cooperation in these efforts.

With best regards.

Sincerely,



Richard C. Holbrooke

The Honorable
Tom Lantos,
House of Representatives.

OPENING STATEMENT OF REP. MARJORIE MARGOLIES-MEZVINSKY
FOREIGN AFFAIRS SUBCOMMITTEE ON INTERNATIONAL SECURITY,
INTERNATIONAL ORGANIZATIONS AND HUMAN RIGHTS
APRIL 28, 1994

Thank you, Mr. Chairman for giving me the opportunity to be with the subcommittee for this hearing.

The situation regarding the transfer of the Berlin Document Center first came to my attention upon reading the March 14, 1994 edition of the New Yorker magazine.

In that edition, acclaimed historian Gerald Posner detailed several serious concerns regarding the history of the negotiations of this transfer. My staff and I immediately began contacting individuals mentioned in the article. Within weeks, we had contacted David Marwell, director of the Berlin Document Center; Elan Steinberg and Israel Singer of the World Jewish Congress; Gerald Posner; Michael Berenbaum of the U.S. Holocaust Memorial Museum; Robert Tatge of the State Department; Robert Wolfe of the National Archives, representatives from the Anti-Defamation League and dozens of others.

Through our investigation, and the leadership of Chairman Lantos, we have come to this point today, where a congressional hearing is necessary to answer a number of questions about this transfer.

Throughout our dealings with American government officials on this matter, it has become clear to me that there are those in our government -- not in the German government, but in the United States government -- who simply do not comprehend the legacy of the Holocaust. It is possible that these hearings could have been avoided -- it is possible that this entire controversy could have been avoided -- if those in charge had been more sensitive to the legitimate fears and concerns of those members of the American and the world community for whom the Holocaust is not merely a historical fact but a horrific memory.

Throughout the discussions my staff heard the comments of men who, no question about it, cared about America, and cared about our relations with Germany. And though there were several differing viewpoints on how to best preserve the integrity of the Berlin Document Center files, I do not question anyone's commitment to these files.

However, statements made by several government officials with jurisdiction in this matter -- statements made in private such as "Just because the Germans lost the war doesn't mean they gave up their right to privacy" about membership in the Nazi party; or an argument that it was important to speed up the date of this transfer because the Germans are "footing the bill" -- these statements disturb me.

There are practical realities, day-to-day diplomatic situations -- and about these I don't want to appear naive. But the German government "footing the bill" for the preservation of these documents doesn't mean a whole lot to someone whose entire family was slaughtered during the darkest period of this century. The German "right to privacy" must be carefully weighed against the need to punish those Nazis whose inhumanity allowed them to murder 6 million Jews and nearly 6 million others.

So while we listen to the statements made here today, I would ask that those individuals who could perhaps be a bit more sensitive to the terror of the Holocaust not only testify, but listen.

Thank you, Mr. Chairman.

OPENING REMARKS OF CONGRESSMAN BENJAMIN A. GILMAN
SUBCOMMITTEE ON INTERNATIONAL SECURITY
THURSDAY, APRIL 28, 1994
HEARING ON BERLIN DOCUMENT CENTER

MR. CHAIRMAN, I WOULD LIKE TO TAKE THIS OPPORTUNITY TO THANK YOU FOR ARRANGING THIS MORNING'S HEARING, A VERY IMPORTANT TOPIC WHICH HAS THE KEEN INTEREST OF MANY OF US.

I WISH TO WELCOME THE DISTINGUISHED PRIVATE VISITORS WE HAVE WITH US THIS MORNING. THEIR PURSUIT OF JUSTICE IS WELL DOCUMENTED -- AND THEIR DILIGENT, TIRELESS EFFORTS AGAINST BURGEONING NEO-NAZISM, REVISIONISM, AND ANTI-SEMITISM ARE COMMENDABLE.

IN THE PURSUIT OF JUSTICE -- AND BECAUSE THE BERLIN DOCUMENT CENTER IS AN EXPANSIVE RESOURCE FOR SCHOLARS, HISTORIANS AND SEEKERS OF JUSTICE AND TRUTH, THIS COMMITTEE IS COMMITTED TO ENSURING THAT OPEN ACCESS TO THE BERLIN DOCUMENT CENTER IS MAINTAINED UNDER FEDERAL GERMAN CONTROL AS THE UNITED STATES PREPARES TO HAND OVER ADMINISTRATION OF THE CENTER.

MR. CHAIRMAN, I UNDERSTAND THAT THERE ARE A NUMBER OF CONCERNS ABOUT THE PROPOSED TRANSFER, WHICH THE SUBCOMMITTEE LOOKS FORWARD TO MORE FULLY DISCUSSING WITH THE WITNESSES THIS MORNING. ACCORDINGLY, I THANK THE WITNESSES FOR SHARING THEIR EXPERTISE AND PERSPECTIVE WITH US, AND IT IS HOPED THAT THIS MORNING'S HEARING RESULTS IN A CLARIFICATION OF THE DETAILS AND RAMIFICATIONS OF THE PROPOSED TRANSFER OF THE BERLIN DOCUMENT CENTER TO THE GERMAN GOVERNMENT.

STATEMENT OF MARY ANN PETERS, DEPUTY ASSISTANT SECRETARY
OF STATE FOR EUROPEAN AND CANADIAN AFFAIRS, BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL SECURITY,
INTERNATIONAL ORGANIZATIONS, AND HUMAN RIGHTS,
COMMITTEE ON FOREIGN AFFAIRS, HOUSE OF REPRESENTATIVES
APRIL 28, 1994

Mr. Chairman, Members of the Committee,

I am pleased to present to you the views of the Department of State on the turnover to Germany of Nazi records captured by the Western Allies and now contained in the Berlin Document Center.

The Berlin Document Center, or BDC, is an archive which the United States assembled soon after the Second World War and has administered with German funding and assistance since. As early as 1952, U.S. policy envisioned the eventual return of captured German records. Transferring the BDC now is appropriate recognition of Germany's full partnership with other western democracies.

Our objectives in the 1992-93 negotiations that led to the turnover agreement were to ensure: (1) full and expeditious U.S. Government access to documents in the BDC during the transition period, when microfilm copies of the documents at the U.S. National Archives might not yet be fully accessible;

(2) prompt access to the originals for authentication purposes in legal and judicial actions or in cases where microfilm copies were not legible; and (3) clear rules for public access to BDC records, both the originals in Germany and the microfilm copies in the United States.

Our October 1993 agreement and accompanying notes verbale achieved these objectives. Nonetheless, there have been some questions raised about scholarly access to originals and the quality of microfilm. We believe that the arrangements we secured in last year's agreement should allay those concerns. I believe we can turn over the BDC's documents to German control on July 1, in fulfillment of our international legal obligation, confident that questions of access and film quality have been addressed comprehensively. We welcome this hearing as an opportunity to explain on the record how the agreement fully protects U.S. interests.

Ensuring A Good Agreement

Mr. Chairman, we began preliminary talks with Germany about turning over the BDC in 1990, drawing upon the record of previous negotiations, specifically in the late 1960s and in 1979-80. Well before we reconvened formal negotiations late in 1992, our intention to turn over the BDC was clear to scholars, Nazi hunters, and other interested Americans who used the facility.

The BDC's American director, David Marwell, regularly informed such visitors that he had been hired in 1989 with a mandate to complete the microfilming of the BDC collections within five years, for the purpose of turning over the original documents.

On March 11, 1993, members of our Office of Central European Affairs, in consultation with our Office of the Legal Advisor, briefed then-Foreign Service Inspector General Sherman Funk, at his request, on the legal and policy bases on which we proposed to transfer title to the BDC holdings. We discussed with Mr. Funk the provisions of 44 U.S.C. Sections 3302 and 3303, which authorize the National Archives to dispose of paper records in certain circumstances, including in cases where microfilm copies are in our possession. The Inspector General concluded that this proposed transfer of USG property was permissible under existing statutes.

In the summer of 1993, while preparing to assume charge of the U.S. Mission to Germany, Ambassador Holbrooke was briefed on the BDC and the recently concluded turnover negotiations. After he assumed his post, the Ambassador decided to reconfirm that the agreement fully provided for American interests. He briefly suspended plans for signature of the agreement and asked that the draft text be reviewed again in the State Department. During our review, Ambassador Holbrooke consulted leading scholars on Germany and the Holocaust, in particular, Professor Fritz Stern at Columbia University and Dr. Michael Berenbaum of the U.S. Holocaust Memorial Museum. Ambassador Holbrooke authorized the

signing of our agreement last October only after receiving reassurance from them and others that American experts familiar with the BDC were satisfied with the agreement's provisions.

Mr. Chairman, we would never have concluded the agreement in question without guaranteeing the continuation of American access to these materials to the same degree that has prevailed for four decades. We have reviewed the concerns raised recently in Mr. Gerald Posner's article in the New Yorker magazine and by private citizens, and we believe that our agreement addresses those concerns, in great part because they were our concerns throughout the negotiations.

USG Access

Mr. Chairman, since the early post-war period, the Department of State, the Department of Justice, and the Immigration and Naturalization Service have used the BDC for hundreds of name checks annually for the purpose of enforcing immigration statutes against persons who were involved in Nazi persecution and who sought to gain entry into the United States. On rarer occasions, information held in the BDC has figured in war crimes proceedings in other countries.

The turnover agreement affords U.S. officials access "whenever necessary" to records now held in the BDC for the investigative, judicial, consular, and other purposes that have characterized our use over four decades. Our Bureau of Consular Affairs believes the agreement provides the full measure and

level of access necessary to enforce our immigration laws. My colleague from the Department of Justice can elaborate on how the BDC will serve other U.S. investigative and judicial functions after the turnover.

I would like to draw particular attention, however, to Article Five section (2) of the agreement. This section provides for the prompt dispatch of original documents to the United States for the official purposes enumerated in the agreement. For the greatest part, Mr. Chairman, U.S. official needs have been fulfilled by examination of copies of the BDC's contents. The State Department just this month facilitated a Justice Department request for release from the BDC of an original name file for investigative purposes. According to records in Berlin, this was only the second such DoJ request in the BDC's history and only the fifth instance overall that original BDC documents have been temporarily removed from the facility. In short, although we have rarely required access to the originals, we have ensured that we will be able to obtain them in perpetuity.

Private Access

The agreement also ensures continued access for private scholars at a level commensurate with that which they have had in the past. Indeed, we had long insisted that the agreement protect private scholarship -- we abandoned our 1967-68 negotiations when Germany's proposed "rules of use" were unacceptably restrictive of private scholarly access. That

decision reflected a constant USG objective which we achieved in the agreement we signed last year.

Two elements of our agreement bear special attention when discussing private access to the BDC. First, Article Four provides that our Embassy Office in Berlin shall designate a liaison officer to represent American interests in access to the original documents until microfilm copies of all documents are fully accessible here. Ambassador Holbrooke has assigned this important duty to the principal officer in Berlin, a member of the Senior Foreign Service. The liaison officer will be a high-visibility point of contact for American scholars should they need assistance.

However, we expect that few Americans who seek to use the BDC will require the intercession of our Embassy. Article Six of the agreement states that after the turnover public access to original documents in the BDC will be in accordance with the rules of the German Federal Archives. The track record of that institution in permitting access by German nationals to the BDC is excellent. The same rules will apply to non-German users of the BDC after the turnover.

In 1988, Germany adopted its federal archives law, and new procedures at the BDC began to reflect both that law and the security concerns that followed revelation of past thefts of documents from the facility. German scholars, journalists, and

private citizens seeking access to BDC documents apply first to the Federal Archives. (A similar procedure has long applied to non-German scholars using Nazi records held by the German Federal Archives.) The Archives interposed no objection to 452 BDC access requests in 1991, 821 requests in 1992, 863 in 1993, and 318 requests from January 1 to April 19 of this year. In that time, according to German authorities, only one request for scholarly access was denied, and requests from other private individuals were denied only rarely. We are confident that this liberal practice on the part of German authorities will continue and will apply to American researchers.

Our 1993 agreement makes the BDC holdings far more accessible, by providing the means to use them to Americans who lack the luxury of a research budget for travel to Berlin. In our 1979-80 round of talks with Germany about turning over the BDC, we agreed that the U.S. National Archives would receive microfilm copies of all documents held there before the originals were turned over to German control. The microfilming project which will be complete by early June provides us reliable, high-quality film of every document in the BDC collections. The project was designed by the U.S. Mission in Berlin with the full cooperation of the U.S. National Archives and the German Federal Archives. The budget proposed by the U.S. Government representatives has been funded fully by Germany, as detailed in the following table.

<u>Year</u>	<u>German Expenditure</u>	<u>Dollar Value (at avg. annual exchange rates)</u>
1989	DM 577,894	\$307,390 (DM 1.88=\$1)
1990	DM 3,218,995	\$1,987,034 (DM 1.62=\$1)
1991	DM 4,497,769	\$2,709,499 (DM 1.66=\$1)
1992	DM 3,646,119	\$2,337,256 (DM 1.56=\$1)
1993	DM 3,568,185	\$2,162,536 (DM 1.65=\$1)
1994	DM 1,600,000 (est.)	\$919,540 (DM 1.74=\$1)
	DM 17,108,962	\$10,423,255

In short, the BDC has received all funds it has requested from Germany for the microfilming project. The private contractor and BDC employees who are doing the work have performed according to the highest professional standards. I defer to my Archives colleague to comment on the technical rigor of the microfilming process.

Mr. Chairman, in 1989 a unanimous resolution of Germany's parliament, the Bundestag, called for the immediate transfer of the BDC. As the preceding figures on the microfilming project indicate, there was a great deal of work yet to be done at that time, and we made clear that we could not agree to a turnover prior to completion of the filming. In the formal negotiations which occurred in late 1992 and early 1993, we gained German acquiescence in setting a turnover date that assured us of adequate time to complete the microfilming project before we yielded control of the originals.

I wish to thank you, Mr. Chairman, and your colleagues on the committee for the opportunity to discuss the Berlin Document Center turnover agreement. As I have tried to explain

today, over the entire history of negotiations leading to this agreement the United States has sought to ensure that the precious historical record contained in the BDC remains fully available to the U.S. Government and to private researchers. The agreement we reached achieved that goal, and we stand behind it. With your concurrence, I ask that the English-language text of the turnover agreement, the accompanying notes verbale, and a brief fact sheet and chronology already provided to your staff be entered into the record in conjunction with my remarks. I will be pleased to respond to any questions you may have.



Department of Justice

STATEMENT OF

MARK M RICHARD
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
AND ASSISTANT TO THE ATTORNEY GENERAL

BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL SECURITY,
INTERNATIONAL ORGANIZATIONS AND HUMAN RIGHTS
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

CONCERNING
TRANSFER OF THE BERLIN DOCUMENT
CENTER TO GERMAN ADMINISTRATION

PRESENTED ON
APRIL 28, 1994

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss the impending transfer of the Berlin Document Center (BDC) to German administration.

Permit me to preface my remarks by pointing out that, while I am in a position to address questions pertaining to access by the Department of Justice to the records of the BDC, questions regarding access by private researchers, journalists, scholars and other non-U.S. Government persons and entities are properly addressed to the National Archives and Records Administration and the Department of State.

My responsibilities at the Department of Justice include overseeing the Office of Special Investigations (OSI), the component of the Criminal Division exclusively assigned the task of detecting, investigating and instituting legal actions against persons who were involved in Nazi-sponsored acts of persecution prior to and during the Second World War.

OSI's staff of 35 prosecutors, historians, investigators and support personnel continues to pursue these cases. Since the creation of OSI in 1979 by order of the Attorney General, 48 Nazi persecutors have been stripped of U.S. citizenship and 42 such persons have been deported, extradited or otherwise removed from the United States. OSI is currently instituting new prosecutions at the fastest pace in its history, a fact that is primarily attributable to the opening of key archives in the former Warsaw Pact countries following the recent dissolution of communist rule in those nations. Those archives have yielded a virtual treasure trove of captured Nazi documents and other evidentiary riches.

Ever since the establishment, sixteen years ago, of the predecessor unit to OSI, the Department of Justice has relied upon the BDC as an essential investigative resource. Indeed, BDC holdings are checked during the initial stage of every OSI investigation. Captured records from the Berlin Document Center have provided key documentary and photographic evidence in numerous OSI investigations and prosecutions, much as they have for investigators and prosecutors in Germany and other countries. Particularly noteworthy is the crucial role that the BDC's file on the notorious Auschwitz selector and experimenter Dr. Josef Mengele played in the Department's effort conclusively to identify his remains following their discovery in a grave in Embu, Brazil, in 1985.

The Department has received excellent cooperation at all times from the U.S. administration of the BDC, most recently under the leadership of BDC Director David G. Marwell. The many hundreds of requests for information submitted annually by OSI have been processed quickly and professionally. In urgent situations, such as when a suspected Nazi persecutor on the

"watchlist" of excludable aliens has been stopped at a U.S. airport or other port of entry, the BDC has responded by telefax within hours. The Department of State, which transmits most of OSI's requests and the BDC's responses thereto, has performed this essential function efficiently and expeditiously.

Throughout the years of negotiations that preceded the signing last autumn of the U.S.-German agreement on transfer of the BDC to German control, the Department of State consulted directly with OSI in an effort to ensure that the Justice Department's investigative and prosecutorial interests would be fully protected. The principal fruits of that consultation process are the written undertakings by the Government of Germany -- set forth both in the main agreement and in the accompanying exchange of diplomatic notes -- that guarantee that, until the microfilm duplicate set of the BDC's holdings is fully accessible in the United States, the BDC will continue to respond to OSI's requests in the same timely and thorough manner to which the Department has become accustomed under U.S. administration of the Berlin Document Center. The German Government has even undertaken to provide telefax copies of BDC records within 24 hours when they are urgently required. Furthermore, the German Government has committed itself to granting us full access to original BDC records in perpetuity, even after the so-called "transition phase" is completed and the microfilm copies are accessible in the United States. Upon request, original BDC documents will be loaned to the United States Government for use in civil and criminal actions.

The Department's confidence in the commitments that we have received from the German Government derives in significant part from the experience that OSI has had over the past fifteen years in dealing with the Bundesarchiv, the German federal archive authority that will be charged with principal responsibility for maintaining and preserving the records of the BDC. In the course of many hundreds of investigations, OSI has called upon the Bundesarchiv to search its archives for pertinent material. Without fail, the Bundesarchiv has responded to these sometimes onerous requests conscientiously and with dispatch, allowing OSI to benefit not only from its important collections of Nazi-era records, but also from the expertise of its highly specialized staff. The Bundesarchiv has made a truly extraordinary contribution to the pursuit of justice in these cases. Moreover, the German Government has facilitated this productive relationship by permitting OSI to transmit its requests directly to the Bundesarchiv rather than requiring that they be sent via the bureaucracy and often time-consuming diplomatic channels through which requests for judicial assistance are customarily forwarded.

The Department of Justice believes that no stone should be left unturned to bring to the bar of justice those who are

provably implicated in the ghastly crimes of the Nazis and their acolytes. We recognize as well the central role that the unique holdings of the Berlin Document Center have played and must continue to play in this effort. We have a high degree of confidence in the arrangements that have been negotiated with Bonn to ensure such continuity. We shall of course monitor the situation closely.

Mr. Chairman, that concludes my formal testimony. I would be pleased to answer any questions that you or other Members of the Subcommittee may have.

MARK M RICHARD
Deputy Assistant Attorney General
Criminal Division
United States Department of Justice
Washington, D.C.

May 1994

Mark M Richard is the Deputy Assistant Attorney General overseeing the Criminal Division's Office of International Affairs; the Internal Security and Terrorism, and Violent Crime Sections; and the Office of Special Investigations. He has been a Deputy since 1979. Mr. Richard began his career with the Department of Justice in November 1967.

In 1992, Mr. Richard received the Department of Justice Distinguished Service Award, the highest award given by the Department. Mr. Richard has been the recipient of the Distinguished Executive Award twice: from President Bush in 1991 and from President Reagan in 1986.

Mr. Richard received his undergraduate degree in psychology from the University of the City of New York in 1961. He was awarded a Juris Doctor in 1967 from the Brooklyn Law School. Mr. Richard is a member of the New York State Bar and the District of Columbia Bar. He is married to Sheila A. Richard and has three children, ages 23-31.

TESTIMONY OF

DR. LEWIS BELLARDO
ACTING DEPUTY ASSISTANT ARCHIVIST
FOR THE NATIONAL ARCHIVES

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL SECURITY,
INTERNATIONAL ORGANIZATIONS AND HUMAN RIGHTS
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

APRIL 28, 1994

My name is Lewis Bellardo. I am the Acting Deputy Assistant Archivist for the National Archives and the Director of Preservation. The mission of the National Archives is to preserve and make available for research the permanently valuable records of the Government of the United States and other related documentary materials. The role of the National Archives vis a vis the Berlin Document Center collections is to accession and preserve a microfilm copy of the documents, and to duplicate and make available a reference copy as soon as possible so that the documents can be more widely available than ever before.

Physical Access: In July 1994 the National Archives will receive approximately 40,000 rolls of microfilm from the Berlin Document Center. This translates into 4 million feet of microfilm since we must duplicate both a duplication negative and a reference positive copy, we will be producing 8 million feet of microfilm, a distance equal to that between Washington and Kansas City. Duplicating this microfilm will require approximately two years. However, the National Archives will release individual series of microfilm for research as soon as they are duplicated. We will duplicate first those series that are likely to have the highest research demand and that will have no access restrictions. These series include records of Nazi Party members and records of the SS. By July 1994 we shall have a duplication schedule for all of the thirty-two series being transferred to the National Archives.

Intellectual Access: Once the microfilm is duplicated, access to the intellectual content of these records will be greater than ever before. Each series will be open for the use of official United States government investigatory agencies as soon as it is duplicated. In addition, we will make records available to all categories of non-government researchers on an equal basis. There will be no "scholarly research" requirement for access. Moreover, all files of the Nazi Party and of organizations such as the SS will be open without restriction for research as soon as we have

completed the duplication of the microfilm. In all, at least 85% of the documents will be open immediately without restriction.

National Archives staff will examine and make access determinations for the remaining series while the unrestricted series are being duplicated. Any access restrictions will be based on the personal privacy of individuals who were neither members of the Nazi Party nor of other organizations such as the SS. The major category of personal privacy in such cases will be medical information. In such cases most of a file may be open for research, but it may be necessary to redact the personal privacy information. Even this restriction would lapse with the death of the individual.

A final note relating to access is that this microfilm is accompanied by a computerized index. The index in conjunction with the microfilm allows a researcher to search much more quickly for a selected file than if the search had to be conducted using manual indexes and paper records.

Technical Notes Relating to the BDC Microfilm: I visited the Berlin Document Center February 7-11, 1993 to examine the microfilm that was to be transferred to the National Archives and to examine the overall microfilming process and indexing system. The microfilm was produced as part of two separate projects. The first microfilming project consisted of several thousand rolls. Some were 35mm microfilm, but most were 16mm produced with rotary cameras. That project was begun in the early 1970's. I am not certain when this filming project ended. The second or new microfilming project began in 1989 and has continued to the present. These rolls are all 16mm film.

I spent much of my three days at the Berlin Document Center examining rolls that I selected at random from each of the microfilm series or files. I did not examine every roll. But the rolls I did examine were placed on an inspection table, and carefully reviewed in their entirety with a magnifying loop.

New Microfilm: From the perspective of physical preservation the microfilm is in excellent condition. The film base is polyester, and as such is both physically strong and chemically stable. There was no evidence of either base or emulsion deterioration of any kind. Nor did I detect scratches that obscured information. Both microfilm reels and containers are of high quality. It should be noted that the microfilm is for the most part more stable than most of the paper records it duplicates, and probably has a longer life expectancy. Many of the original documents were created on paper of poor quality that has seriously deteriorated from natural aging. If paper records of this quality were transferred to the National Archives, our normal policy would be to microfilm the records and provide the microfilm, rather than the paper records, for research use.

Not only is this microfilm excellent from the standpoint of physical preservation; it is also of high technical quality. The resolution is excellent. The density is

acceptable. (Exact density readings were not taken, given the amount of work to be done in a short period of time.) I found no density problems that would interfere with legibility or the ability to duplicate the film. All images checked were legible. None were blurred or so faint that they could not be read. Apparent faint images turn out upon closer examination to be the blank reverse side of one-sided documents. The BDC has a policy of filming both sides of every page to minimize the likelihood of a camera operator forgetting to turn a two-sided document. In every case where original records were compared with microfilm images, low contrast or faint (though readable) text was a function of the original document, not the microfilm copy. Targets, both technical resolution targets and targets identifying the documents on the film, are more than adequate. The film contains frame numbers at the edge, as well as blip marks for each frame. The computer-assisted retrieval system locates the desired image by counting the blips. The only technical problem that I detected in the new film was that one or both leaders on most rolls are too short to be duplicated without adding extra temporary leader. This is not a major problem, but it does slow the production rate slightly.

I also had an opportunity to review the filming, processing, and indexing operations, and the procedures appeared to be highly professional. As noted above camera operators microfilm both sides of every page, regardless of whether there is text on the reverse side. In this way the likelihood of an operator failing to notice that a document has text on both sides and thus failing to capture the reverse image is virtually eliminated. The company that does the filming conducts a first level quality control review. The Berlin Document Center staff conducts a second level quality control review.

The planetary cameras that are used in the operation create two camera original rolls. One set of these rolls will come to the U.S. National Archives. The other camera original set will go to the German National Archives. The two rolls are then developed in two different film processors. In this way if there is a malfunction in one processor, one camera original roll survives to be used to make a duplicate copy for the second set. In such rare cases the duplicate is identified. We have advised the Director of the BDC that in these cases the United States should receive the surviving camera original.

The documents are indexed via computer prior to microfilming, and at the time of filming the film location information for that document is scanned into the computer. This approach also helps to minimize the possibility of missed documents. As previously noted the index vastly increases the ability to search the collection.

Although technical quality is carefully checked, and although there is careful random checking for gaps in the filming, neither the contractor nor the BDC staff do a frame-by-frame verification to ensure that every single page has been filmed. It is uncommon for archives to do such frame-by-frame film to original document verification. The National Archives, for example, almost never resorts to such a detailed level of review. Since we do not normally destroy the original records, we

are able to refile missing documents if any are discovered. In the case of the BDC film, if we identified missing pages, we would have the German Archives film the missing pages with appropriate authenticity targets, and we would add them to our copy.

Old Microfilm: The microfilm produced during the first project in the early 1970's is of much poorer quality than the newer microfilm. The film does not show signs of deterioration. However, some of the earlier series were microfilmed in a very sloppy manner. There are numerous cases in one series where documents became overlapped in the rotary feed mechanism, with a resulting loss of information. A number of documents were folded over in the filming process. Some rolls contain very low contrast images that would be difficult to reproduce. Some rolls are badly scratched, stemming probably from camera or processor damage.

Following my visit I informed the Director of the BDC that two series from the first microfilm project should be refilmed. Other series had already been refilmed. This refilming work has been undertaken and will be completed by the time of transfer, thus eliminating a major concern that we had with the first few thousand rolls of the microfilm.

In summary I would stress that the National Archives will duplicate the BDC microfilm within two years of its transfer. We will focus on duplicating and making available first those series that are likely to receive the greatest research interest. All duplicated microfilm will be made available to United State Government investigative agencies, such as the Department of Justice Office of Special Investigations. The National Archives will provide equal access to all non-government researchers. We anticipate that over 85 percent of the records will be available for research without restriction as soon as the microfilm is duplicated, and we will determine as quickly as possible which, if any, of the remaining microfilm series contain restricted information. We will attempt to screen these series as quickly as possible. My personal examination of the microfilm revealed that it is of high quality and was professionally produced. The computerized index and microfilm should result in faster searches than would have been possible using manual indexes and the original records. In short, I believe that the needs of the research community will be met once the microfilm has been duplicated.

CURRICULUM VITAE
LEWIS J. BELLARDO

PRESENT POSITIONS

Acting Deputy Assistant Archivist
for the National Archives,
Office of the National Archives,
National Archives and Records
Administration (1993-94)

Director, Preservation Policy and
Services Division, National Archives
and Records Administration (1990-)

PREVIOUS POSITIONS

Director, Center for Legislative
Archives, National Archives and
Records Administration (1989-1990)

Director, Georgia Historical Society
Savannah, Georgia (1986-1989)

State Archivist and Records
Administrator, Kentucky Department
for
Libraries and Archives (1980-1986)

EDUCATION

B.A. Rutgers University (1965)
M.A. University of Kentucky (1968)
Ph.D. University of Kentucky (1979)
Major field: U.S. Southern History

ACADEMIC AWARDS
AND HONORS

Phi Beta Kappa
Phi Alpha Theta
Henry Rutgers Scholar
Magna Cum Laude
John Parker Winner Award in Psychology

NATIONAL PROFESSIONAL
ACTIVITIES

National Association of Government
Archives and Records Administrators
President (1984-1986)
Vice President (1982-1984)
Secretary (1981-1982)
Delivered papers (1978,
1980-1981, 1984)

Organization of American Historians
Member

Society of American Archivists
Fellow
Co-Chair ALA/SAA Joint Committee
(1989-1991)
Member, Committee on Goals and
Priorities (1988-1990)

RESEARCH AND
PUBLICATIONS

Coauthor, A Glossary for Archivists,
Manuscript Curators, and Records
Managers (1991)

Coeditor, The Public Archives of the
Commonwealth of Kentucky: A Summary
Guide to the Holdings of the Kentucky
State Archives (1985)

House Foreign Affairs Committee
Hearing on transfer of Berlin Document Center
April 28th, 1994

TESTIMONY OF PROFESSOR GEOFFREY J. GILES

The recent statements by senior German archivists about probable restrictions of access to the documents in the Berlin Document Center are causing grave concern to historians of modern Germany in this country. The files in this archive are among the most important for the study of the Nazi period, for which much scholarly research remains to be done.

My own experience of working in the BDC ranges over the past twenty years. I am pleased that the entire archive is being microfilmed, which will preserve its holdings indefinitely. I am now satisfied, after talking with Dr. Marwell, the director, that the microfilming project has been of the highest quality. Yet I must add that on certain occasions there is no substitute for the original document. This is particularly the case for documents written lightly and untidily by hand in pencil or ink, especially those using an archaic script, of which there are many in the BDC. Often they are almost impossible to read in the original, but copies such as I have received in the past from the BDC or the German Federal Archives are indecipherable. Guarantees of access for historians (and not just government investigators) must be maintained, in order that enquiries into this period of history may be continued uninterrupted.

Despite some rumors to the contrary, it appears that scholarly research by historians from this country and others will continue on a "business as usual" basis after July 1st, 1994. That at least is the expectation that Dr. Marwell has of his successor, Dr. Krüger. It is certainly disturbing that Krüger has been restricting researchers on the Bergen-Belsen concentration camp, at the Berlin-Hoppegarten archive he currently heads, to two files per day, making their work extremely difficult. The explanation is that Hoppegarten is short-staffed, and that is not expected to be the case at the BDC. Yet that is no reason not to press for safeguards. With the economic situation in Germany still rather uncertain, the government may well be obliged to cut positions at any of its archives in the next few years, which could provide a plausible excuse for severe restrictions not currently expected. In any case, applications for use of the BDC records will increase enormously, as ordinary Germans become eligible for access. In 1993, the BDC conducted 20,000 name searches. A doubling of requests might represent the most conservative estimate for 1995, given the experience of the Stasi secret police archive in East Berlin. The staff will be required to meet some of these requests, and scholars may suffer as a result.

The German Federal Archives has a generally very good record of cooperation with historians. But it should be noted that that is dependent upon the good will of its leadership at any particular moment. The archives law that regulates access and controls privacy is not in itself restrictive, but such laws can be interpreted in unhelpful ways. The record of the relations of German archives in general toward academic historians, trying to conduct research on the Nazi period, has over the last twenty-five years been at best a mixed one, and sometimes downright obstructionist. Archivists have lied about the existence of files, they have flatly refused to let scholars see them, and occasionally they have even burnt Nazi files rather than reveal the compromising material that they contain. The worst excesses of this type occurred in the 1970s,

Testimony Giles

but with the passage of data protection laws in the 1980s, many obstacles were again laid in the path of those investigating human rights violations under the Third Reich, leading to a widespread perception that it was not (as was the intention of the law) the privacy of the victims that was being protected, but rather that of their surviving Nazi persecutors. For example, the archives law of the state of Baden-Württemberg was widely acclaimed as one of the most "research friendly" in Germany. Yet as late as 1988 my own research was completely blocked, when I tried to investigate the case of a university professor who had been unjustly arrested, and probably tortured by the Gestapo into signing a confession. The unfortunate man was then castrated by a prison doctor before his trial (which it was feared would lead to an acquittal), and he was stripped of his doctorate by the University. I was denied access to the files with the argument that the matter was too sensitive. When I publicly deplored this cover-up, the chancellor of the university began to publicly defame me, and it took a feature on the main evening news on German television before the Minister of Education intervened to promise reasonable access to such files. I mention this incident, in order to underline the fact that there are still very many people in Germany, often people in powerful positions, who will do all they can to prevent research into the Nazi history of their institution, city, state or country.

The microfilming to the BDC records is a great step in the direction of preventing such abuses, apart from two caveats:

- 1) I cannot believe that it will take less than two years for the users' copy to become available in the National Archives;
- 2) The National Archives' own privacy restrictions have not yet been clarified.

If all goes well, American researchers will be able to work on the BDC material in this country within the two-year time frame. Yet just as staffing cuts may alter the conditions of access in Berlin, we cannot know in advance what other priorities within the National Archives may remove staff from this particular project, perhaps delaying availability for several more years. During this interim period it is especially important that historians continue to be allowed to use the original documents in Berlin. On the second point, I have to express my astonishment that the National Archives is imposing any restrictions to bona fide researchers on access to the microfilms. While such hindrances have become more frequent in German archives in the last decade, they have never been imposed upon users of the BDC. That is why it has been such a crucial archive for the investigation of the Third Reich. And therefore any such new restrictions that move toward the new German practice will worsen conditions of research, and indeed directly hamper the efficient and speedy completion of research in this area.

The prognosis is not good. It looks as though, as a result of the BDC transfer, important research projects into the Nazi period will at best be made more cumbersome. At worst, research into these topics could virtually cease for the next two years, if access to the BDC is not guaranteed to American researchers. This is a serious matter indeed, the more so in light of increased public interest in the Holocaust following the appearance of the movie, "Schindler's List". I believe it to be vital for the Congress to express these concerns in a forthright manner to the German government.

GEOFFREY J. GILES was born in Bournemouth, England in 1947, studied German as an undergraduate at University College, London, and was awarded a Ph.D. in history from the University of Cambridge. In 1974 he moved to the United States, where he first spent four years in Yale University's think-tank, the Institution for Social and Policy Studies, before moving to Gainesville to take up his present position as a professor of history at the University of Florida. He has been an Alexander von Humboldt Fellow, and a German Marshall Fund Fellow. Currently he serves as Chair of the German Studies Association's Archives Committee, and is President of the Alcohol and Temperance History Group. His book, Students and National Socialism in Germany, was published by Princeton University Press.

Testimony of Henry Friedlander, Professor of History, Department of Judaic Studies, Brooklyn College, City University of New York, before the Subcommittee on International Security, International Organizations and Human Rights of the House Foreign Affairs Committee, 28 April 1994.

Mr. Chairman, Members of the Committee, it is a great honor to testify before you about the transfer of the Berlin Document Center (BDC) from American to German control. My first experience working with German documents in Allied custody dates back to 1957, when I did research for my Ph.D. dissertation on photocopies of German cabinet minutes at the British Foreign Office Library in London, and later in the United States on microfilms at the National Archives and the Hoover Institution. Further, in 1958 I worked for the American Historical Association in Alexandria, Virginia, selecting and describing captured German documents for microfilming. My first research experience with the records of the Berlin Document Center, however, came almost twenty years later, in 1975, and has continued until today.

The BDC is a unique archive holding personnel records from the Nazi party, its formations, and government agencies. It provides biographical information essential for any historian writing about Nazi Germany. In my most recent research project this involved, for example, information about 79 physicians and scientists involved in the murder of the handicapped, and later also the murder of Jews and Gypsies. As you can see from my summaries, I recorded their dates and places of birth, the years they received their medical degrees and licenses, their specialization certifications, and their memberships in the Nazi party and its formations. Although BDC records are organized by person, not by subject, information about each person is filed in various collections. Thus information had to be compiled from the personnel record of each of the 79 persons in several distinct record groups. This involved documents from at least 632 locations. To compile such 79 profiles from microfilms would be extraordinarily difficult and cumbersome. In the years of American control of BDC, access was total,

working conditions ideal, and service friendly and efficient. This will be sorely missed.

Microfilms have their uses, but they are not a substitute for the original documents or even good photocopies. They are better than nothing, and thus serve an important security function. But for research they are decidedly inferior. Microfilms do not provide the texture of the original. They make comparisons difficult; one can look at only one frame at a time. Research in microfilms requires a constant change of rolls. And it is usually very cumbersome to obtain copies from microfilms. Further, copies are simply not as easy to decipher as the original, especially in records that include so much handwriting. In some cases copies are almost unreadable, as you can see from those involving the staff of the killing centers Belzec, Sobibor, and Treblinka, which were partly burned. Finally, as I get older, I have discovered that microfilm reading and bifocal glasses are simply not compatible.

I therefore believe that regardless of who owns these documents, the originals should remain as accessible as they have been under American custody. I do not quarrel with the desire of the Germans to possess their Nazi personnel files, although I do not understand why they want to spend large sums of money to do so at a time when they find it difficult to pay for the modernization of archives, libraries, and universities in East Germany. Unfortunately, I fear that the transfer agreement does not guarantee continued access.

My research experiences in Germany, both at the Federal Archives and those on the state level, have shown me that access is often granted or denied in a completely arbitrary fashion. In some places, total access was granted, and copies were provided in an open and efficient manner. I would never have been able to complete my research without the generous support

of the state archives in Stuttgart, Wiesbaden, and Berlin. But in other local archives the opposite has been true; the archives in Berlin-Dahlem, Düsseldorf, and Hamburg are notorious for restricting access.

The Federal Archives in Koblenz and Freiburg have also been most forthcoming, granting access and providing copies. But there were exceptions, and those are revealing. The so-called Arnold collection at Koblenz contains official German government documents concerning the fate of the Gypsies during the Holocaust. But they are available only with the permission of the donor, the "Gypsy expert" Hermann Arnold, who had received the documents from the Nazi perpetrators. The collection includes minutes of a meeting of senior officials of Heydrich's security police, a document as important for the history of the murder of Gypsies as the Wannsee minutes are for that of Jews. At the 1991 meeting of the German Studies Association in Los Angeles, I publicly asked Klaus Oldenhage of the German Federal Archives, who participated at a panel I chaired, about this document. He denied that any such documents would be kept secret and gave his assurance that he would provide a copy. I am still waiting.

My encounter with other types of German records has been useful in placing my archival experiences in perspective. For the last ten years I have conducted research in the postwar judicial records of German war crimes trials. Although there is no obligation to open such recent records for research, I gained full access because state attorneys, even the attorneys general, were anxious to make them available. My dealings with state attorneys has been eminently satisfying, but it was based on personal contacts, and the rules of the justice ministries, which are more liberal and more flexible than those of the interior ministry that controls the archives. Both judiciary and archives demand privacy for individuals mentioned in the documents, the infamous Datenschutz, but the judiciary simply asked that the

researcher sign an agreement not to mention individuals unless they are "persons of history," which includes, after all, all Nazi functionaries; they do not ink out the names. Still, recent changes in judicial regulations require permission from the ministry for access granted to non-Germans (in their phraseology: "persons who do not reside in the territory covered by the German penal code"). I have had no personal trouble to gain this permission, but it shows how easily access could be limited for Americans.

Copies of most judicial records have been collected at the Central Office for the Investigation of Nazi Crimes in Ludwigsburg. The Ludwigsburg collection is very similar to the Berlin Document Center. Both were originally designed to serve a government function, and have continued to do so while also functioning as a research archive. Both grant easy access, give expert guidance, and provide copies. As in the case of BDC, the Federal Archives has been anxious to acquire the Ludwigsburg collection. There have been several serious objections to such a transfer of records. Opponents have argued that the archives will disperse the documents among various collections, and thus destroy the unity and context of these records. They have also pointed out that such dispersal would make the excellent Ludwigsburg catalogue useless, and that without a knowledgeable staff no one would be able to explain the collection. Many of these complaints apply also to the BDC. Concerning Ludwigsburg, the judicial authorities have so far, fortunately, been successful in resisting transfer to the German Federal Archives.

Since even the best microfilms are not a substitute for the original documents, I do hope, Mr. Chairman, that the United States can persuade the German government to guarantee the continued operation of the BDC in its present form, and with continued access for all American researchers without the imposition of privacy limitations on historic records.

HENRY FRIEDLANDER

Brief Biography

Henry Friedlander was born in Berlin in 1930, deported in 1941 (Lodz Ghetto, Auschwitz, Neuengamme, Ravensbrück), and entered the United States in 1947. He received his M.A. (1954) and Ph.D. (1968) in modern German history from the University of Pennsylvania with a dissertation on The German Revolution of 1918 (Univ. Microfilms 1968 and Garland Publ. 1992). He served on the project of the Committee for the Study of War Documents microfilming the captured German documents, taught history at the Louisiana State University in New Orleans, McMaster University in Canada, the University of Missouri in St. Louis, and the City College of New York, and is currently Professor of History in the Department of Judaic Studies at Brooklyn College of the City University of New York.

Since 1970 Professor Friedlander's research has focused on Nazi Germany and the Holocaust. He co-edited The Holocaust: Ideology, Bureaucracy, and Genocide (1980), the Simon Wiesenthal Center Annual (1984-1990), and the documentary series Archives of the Holocaust (1988-93). He was also a co-author of Vol. 2 of Jewish Immigrants of the Nazi Period in the U.S.A. (1981), and a contributor to Genocide: Critical Issues of the Holocaust (1983).

Professor Friedlander also published numerous articles on various aspects of the Holocaust, including "The Language of Nazi Totalitarianism," in Shoah (1978); "Toward a Methodology of Teaching about the Holocaust," in Teachers College Record (1979); "The Nazi Concentration Camps," in Human Responses to the Holocaust, ed. Michael Ryan (1981); "The Deportation of the German Jews," in Leo Baeck Institute Yearbook (1984); "Jüdische Anstaltspatienten im NS-Deutschland," in Aktion T4 1939-1945, ed. Götz Aly (1987); "Holocaust als Problem der politischen Bildung in den USA," in Lerntag des Zentrums für Antisemitismusforschung, Vol 5, ed. Wolfgang Scheffler and Werner Bergmann (1988); and "Euthanasia and the Final Solution," in The Final Solution: Origins and Implementation, ed. David Cesarani (1994).

Professor Friedlander's research has also focused on the legal implications of postwar trials, and this investigation has so far led to the publication of four articles in the Simon Wiesenthal Center Annual: "The Judiciary and Nazi Crimes in Postwar Germany," (1984); "Nazi Criminals in the United States: The Fedorenko Case," (1985); "Nazi Criminals in the United States: Denaturalization after Fedorenko," (1986); "The Extradition of Nazi Criminals: Ryan, Artukovic, Demjanjuk," (1987); a survey "The Trials of the Nazi Criminals: Law, Justice, and History," in Dimensions: A Journal of Holocaust Studies (1986); and a contribution to the symposium "Holocaust and Human Rights Law," in Boston College Third World Law Journal (1988).

Professor Friedlander has just completed a monograph entitled The Origins of Nazi Genocide: From Euthanasia to the Final Solution, to be published in 1995. This study shows how the Holocaust involved a progression from the mass murder of the handicapped (the so-called euthanasia program) to the mass murder of Jews and Gypsies (the so-called final solution).

STATEMENT OF ELAN STEINBERG

EXECUTIVE DIRECTOR

WORLD JEWISH CONGRESS

ON THE BERLIN DOCUMENT CENTER

BEFORE THE HOUSE COMMITTEE ON FOREIGN AFFAIRS

APRIL 28, 1994

Mr. Chairman, Members of the Committee, I thank you for the opportunity of allowing me to testify on the impending transfer of the Berlin Document Center from U.S. to German control and wish to commend you on behalf of the World Jewish Congress for the diligence you have shown in pursuing this matter.

The World Jewish Congress is the representative body of Jewish communities in eighty countries and was founded in 1936 to mobilize the Jewish people and all democratic forces in the face of the looming threat posed by Hitler's Germany. At the Nuremberg War Crimes Tribunal, the WJC served as counsel for Jewish affairs for the American prosecutors. Our concerns regarding the fate of the BDC are therefore manifest.

More than three years ago, when we became aware of plans to remove the archives of the BDC from American control, a WJC delegation visited the site and gave public airing to our concerns which were reported by the Reuter's news agency and The Washington Post. With the hand over of these millions of documents scheduled for two months from now, our concerns, sadly, have not been allayed.

There are legal, technical, procedural, practical, and moral dimensions to the issue pertaining to relinquishment of the BDC. The legal and technical matters will undoubtedly be addressed in the statements and testimonies being provided this Committee by the relevant experts at hand. I would, if I may, seek to relate from our experience to the moral and then practical and procedural dimensions.

Elie Wiesel - Nobel laureate; Holocaust survivor - noted: "It is not enough to know, or to wish to know, everything possible about the victims, we must also try to know as much as possible about the killers. The document center deals with motivation, possibilities, and 'achievement.' All available information must be insured so it will not be curtailed or hidden in any way. That is why the documents should have remained in the hands of the Americans."

We will undoubtedly hear how many marks the German government paid to have those documents microfilmed. I would submit the price we paid to acquire these documents was immeasurably higher. The currency of course was the blood of brave young American and Allied soldiers. Is their sacrifice to be redeemed so cavalierly? Do we have the moral right therefore to acquiesce in the relinquishment of this terrible historical legacy? I pose the question of course, but I do not answer it.

Our direct experience can serve as an example of what obstacles lay before us if nothing is done before July. The case in this instance is that of Dr. Hans Joachim Sewering.

In 1993, Dr. Sewering - a former head of the German Doctors Guild who runs a medical practice in Dachau near Munich - was to assume office as president of the World Medical Association. Dr. Sewering however had been a member of the Nazi SS.

The WJC obtained from the BDC a thirty-one page file on Dr. Sewering's Nazi past detailing his membership in the Nazi party and the SS. (The WJC wishes to submit this file to the Committee). The international outcry following these revelations and charges of his involvement in the Nazi euthanasia program, forced Dr. Sewering to withdraw from the presidency of the World Medical Association.

That was last year. Under current arrangements for the transfer of the BDC, the World Jewish Congress would apparently not have access to the Sewering file after July. German privacy laws would bar that access.

It should be stressed that this is because the Sewering case was not a criminal proceeding. We note in this regard the comments by Dieter Kruger, the German archivist who will take charge of the BDC. In the New Yorker article of March 14, 1994 he told author Gerald Posner, "I am bound by the law and must protect the privacy of the person for thirty years after his death. I will sometimes have to reject access to original documents." He pointedly added, "If

someone is only interested in finding out if a politician was a party member, then that is not historically useful."

It might be asked if the matter is moot since microfilm copies will be available here after July. But that's the problem - copies won't be here in July. The user's copy won't be available for two years or more. Until then, - putting aside technical questions regarding microfilm copies - unfettered access to the original documents is imperative.

The World Jewish Congress salutes the Justice Department's Office of Special Investigations for its diligence in insuring that clauses in the agreement with Germany allows it continued access to the BDC. Were it not for OSI's persistence in this matter, even this might have been lost. Unfortunately, scholars, historians, research institutions, and journalists are not included under the current arrangements. And if they are not protected, the public at large is not protected.

Mr. Chairman, what we respectfully ask of this Committee is nothing less than a writ of protection for the search for historical truth. At a minimum, we would ask your help in securing continued unfettered access to the BDC. Certainly, it is not too much to ask that this continue until a complete microfilm users copy of the documents are available - a set which should be scrutinized for acceptability by an independent panel of historians and experts. Until these safeguards are in place, we are shirking our moral and historical responsibility.

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Danks, New-Dan, Inc. und Tochter in Englandstr. 5, E. KARL-MÖLLER oder FRIEDA MÖLLER

SEWERING

Signature John Lockman

Staatsangehörigkeit: D. R. - Deutscher Dokumenten-Nr.: Ja/Nein; Fälscher-Rückmeldung: Ja/Nein

Gelesen am: 3. P. 16. in: Goethe

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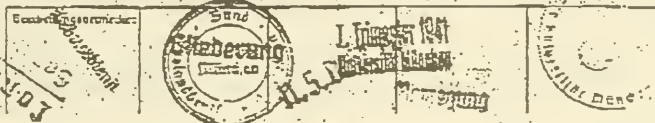
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1955. (Date of birth): 10/11/55. 1-11-55. 1-5-58. Mittel-Tier 80554

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 J. Angehöriger anderer Gemeinde: 99 (Geb. 1. 11. 25) Dienstgrad: 11-11

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Studentenförderung Universität Bonn

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Place: Sebring Domain: Sebring

Erreichte am: Frankfurt / Main

Erhalten von: Dobson Erhaltungsdatum: 27. 5. 18. Empfänger: Neu

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Weinchen, den 28. Juli 1917

Studentenführung:

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Radio - broadcast on: _____

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Anmeldeschein der Studentenführung

(Sorgfältig und sorgfältig ausfüllen!)

Leitender (Leiter oder Leiterin) des Bundes: p. B. KARL MÜLLER oder FRIEDR. MÜLLER

Name: Schering Vorname: Hans Joachim

Geburtsdatum: 1.8. Geburtsort: Leipzig

Religionszugehörigkeit: evangelisch

Politische Überzeugung: Ja/Nein

Geburtsdatum: 30.7.36 in: Reichswald/Westf.

Beruf des Vaters (genauere Bezeichnung): Betriebsleiter

Kaufkraftvermögen (einschl. des besitzenden): 10 Sonstige Einkünfte im Besonderen: 10

Beschreibung (s. B. Tarnung): Nachricht. Fachschaft (s. B. Fachschaft):

Wo haben Sie zuletzt studiert: Wien Legezeit der Sonette: Reichswald 39

Anmeldung zum NSDAP am: 15.5.36 Dienstort (s. B. in der

Wann wurde das Mitgliedsbuch ausgestellt: 18.12.1938 Buch Nr.: 80554

Stammesherkunft (s. B. in: Wien

Schulabschluss der Kammerarbeit:

Wohnt in der Studentenführung (Kameraler, Fachgruppenleiter, Kammerarbeitler u. d.)

Partei- und Mitgliedschaften: 1934 Mitgliedschaft: 1938

Abgabe des Mitgliedsbuches: 1934 in Unterzeichner bei: Schering

Regierungsamt 13 zu Berlin

Eintragungs- nummer: 		Landdienst Sonderdienst	Bewegung	
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 Nachschichte abgelehnt: Ja/Nein: von 1.8.34 bis 12.8.35
 von 1.9.39 bis 10.4.40
 Waffengattung: Reitkür Welche Reiterleistungen abgelehnt: 228 St. bis 1.8.36
 Jäger Dienstgrad: Feldwebel
 Inwiefern werden Abzeichen und Ehrenzeichen
 Welche Land- und Subskribenten haben Sie abgelehnt:
 Welche Subskribenten haben Sie abgelehnt:
 Für welche Reiterleistungen haben Sie abgelehnt:
 Welche Ehren haben Sie im K. u. K. bestanden:
 Glauben Sie sich der besten Reiterleistung im K. u. K.: Ja/Nein: von _____
 Sonstige Bemerkungen:

Ich bestätige die Richtigkeit der Angaben.

München , am 18. April 1940 Heinrich K. 7
 (Ort) (Datum) (Unterschrift)

Eidmeldeschein der Jugendeneingetragung

(Sorgfältig und vollständig auszufüllen!)

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Sewering

Vorname **Hans-Joachim**

Standort **Dietrich**

Deutscher Vorkursungsbezirk: **Te. Tsch. Reichs. Verwaltung: 18. Tsch.**

geboren am **30. I. 1916**

in: **Bochum / Westf.**

Heute (Eidmeldung) (Anzahl des begünstigten): **11**

Sonderzahl im Jugendamt: **11**

Eintragung (z. B. Technik) **Berufsausbildung**

Sonderzahl (z. B. Hochbau): **Vollständigkeit**

Eintragung (z. B. Bauwesen) **1. 11. 35.**

besetzt am: **18. 5. 35.** Mithel: **80554**

Eintragung (z. B. Bauwesen) **Lfd. Bauwesen**

Vierstellige: **Werkzeug**

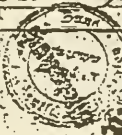
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Vierstellige: **Werkzeug**

Eintragung (z. B. Bauwesen) **Kaufleute 1912**

Eintragung (z. B. Bauwesen)

Landdienst
Sanitätsdienst



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Verordnung



NECHD - Ja/Nein: Fortnahme: 7.5.84. Mngl.-Nr.: 1.54.3000
 1.5. Festsetzung der Güter: 44 Jhr: 1.11.33. Verbleib: 44-Nach

Welche Land- bzw. Geschäftsbetriebe und -lager haben Sie seit der letzten Besteuerung mitbewahrt:

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Bemerkungen: keine

Ich bestätige die Richtigkeit der Angaben.

M.H.

am 18. Sept. 40.

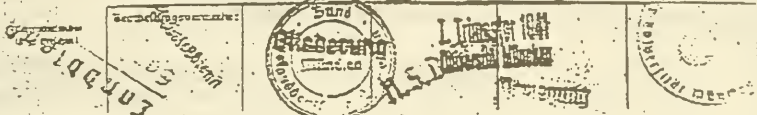
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Statement

of

ANTI-DEFAMATION LEAGUE

ON

The U.S.-German Agreement
to Transfer Control of the
Berlin Document Center

BEFORE THE

House Committee on Foreign Affairs

Subcommittee on International Security, International
Organizations, and Human Rights

April 28, 1994

I AM JESS HORDES, WASHINGTON REPRESENTATIVE FOR THE ANTI-DEFAMATION LEAGUE, AND ACCOMPANYING ME IS MICHAEL LIEBERMAN, THE LEAGUE'S WASHINGTON COUNSEL. WE COMMEND YOU AND REPRESENTATIVE MARGOLIES-MEZVINSKY FOR YOUR ACTIVE EFFORTS TO ENSURE ACCESS TO THE UNIQUE COLLECTIONS OF THE BERLIN DOCUMENT CENTER (BDC).

THE BDC SAFEGUARDS THE WORLD'S LARGEST AND MOST VALUABLE COLLECTION OF MATERIALS DOCUMENTING THE THIRD REICH. FOR ALMOST FIFTY YEARS, THE CENTER'S ORIGINAL NAZI PERSONNEL AND MEMBERSHIP RECORDS HAVE BEEN AN ESSENTIAL RESOURCE IN THE INVESTIGATION OF NAZI WAR CRIMINALS, AND ITS ARTIFACTS, HANDWRITING SAMPLES, AND PHOTOGRAPHS SERVE AS ORIGINAL TESTIMONIALS TO THE BRUTAL NAZI REGIME FOR HISTORIANS AND SCHOLARS.

WE APPRECIATE THE OPPORTUNITY TO PRESENT TESTIMONY ON THE IMPORTANCE OF THIS ONE-OF-A-KIND COLLECTION AND TO RAISE CONCERNS ABOUT THE PROSPECTS FOR CONTINUED OPEN ACCESS TO ITS HOLDINGS AFTER THE UNITED STATES TRANSFERS CONTROL OF THE BDC TO GERMANY IN JULY.

ADL HAD BEEN AWARE OF ONGOING NEGOTIATIONS OVER THE STATUS OF THE BDC. IN MARCH, 1990, ADL WROTE TO THE ASSISTANT SECRETARY OF STATE FOR EUROPEAN AFFAIRS TO UNDERScore OUR BELIEF THAT NO ACTION SHOULD BE TAKEN REGARDING THE BDC WHICH COULD IN ANY WAY THREATEN CONTINUED WIDESCALE ACCESS BY GOVERNMENT OFFICIALS AND SCHOLARS. THE STATE DEPARTMENT RESPONDED, STATING ITS COMMITMENT THAT THE BDC WOULD REMAIN UNDER AMERICAN CONTROL UNTIL THE MICROFILMING OF THE DOCUMENTS WAS COMPLETED.

LAST OCTOBER, WITH LITTLE FANFARE -- AND NO ADVANCE NOTICE TO INTERESTED PARTIES OF THE TERMS -- THE UNITED STATES ENTERED INTO AN AGREEMENT TO RELINQUISH CONTROL OF THE BDC AND TRANSFER MANAGEMENT OF THE RECORDS AND MATERIALS TO GERMANY. WE UNDERSTAND WHY AMERICAN CONTROL OF THE BDC IN THIS POST-REUNIFICATION PERIOD IS A MATTER OF SOME EMBARRASSMENT TO GERMAN GOVERNMENT OFFICIALS. YET, WE ARE TROUBLED BY DOUBTS RECENTLY RAISED BY SCHOLARS AND RESEARCHERS ABOUT THE FUTURE STATUS OF THE BDC -- AND WE WROTE TO SECRETARY OF STATE WARREN CHRISTOPHER IN EARLY APRIL TO DETAIL OUR CONCERNS.

IN OUR OPINION, THE UNITED STATES MUST RECEIVE ADDITIONAL ASSURANCES FROM THE GERMAN GOVERNMENT THAT INVESTIGATORS, SCHOLARS, AND RESEARCHERS WILL CONTINUE TO HAVE UNFETTERED ACCESS

TO THESE ESSENTIAL AND IRREPLACEABLE DOCUMENTS WHEN THE COLLECTION IS UNDER GERMAN CONTROL. OUR PREFERENCE WOULD HAVE BEEN FOR THE U.S. TO MAINTAIN CONTROL OVER THE BDC UNTIL A COMPLETED USER'S COPY OF THE DOCUMENTS WAS AVAILABLE IN THIS COUNTRY.

A RECENT NEW YORKER ARTICLE DOCUMENTED CONCERNS BY SCHOLARS, HISTORIANS, AND U.S. GOVERNMENT OFFICIALS ABOUT ACCESS TO THE BDC COLLECTION AFTER JULY. ITS AUTHOR DESCRIBED THE IMPACT OF THE TRANSFER AT THIS TIME AND QUESTIONED THE WISDOM OF VESTING AUTHORITY FOR ACCESS TO THE BDC COLLECTION WITH GERMAN GOVERNMENT OFFICIALS -- WHO, REPORTEDLY, HAVE NOT ALWAYS HONORED PAST AGREEMENTS ON NAZI PERSONNEL DATA AND WHO OPERATE UNDER MUCH MORE RESTRICTIVE PRIVACY LAWS. THE ARTICLE ALSO QUOTED SCHOLARS AND U.S. GOVERNMENT OFFICIALS EXPRESSING APPREHENSIONS ABOUT THE POSSIBILITY OF A REORGANIZATION OF THE BDC COLLECTION -- OR A DISPERSAL OF THE FILES TO REGIONAL ARCHIVES THROUGHOUT GERMANY.

THE THREE-PAGE TRANSFER AGREEMENT FOR THE BDC OUTLINES POST-TRANSFER EMPLOYMENT OPPORTUNITIES FOR CURRENT STAFF AND DESCRIBES THE RESPONSIBILITIES OF A LIAISON OFFICER DESIGNATED TO FACILITATE A SMOOTH TRANSITION. THIS OFFICER IS ALSO SUPPOSED TO REPRESENT AMERICAN INTERESTS IN ACCESS TO THE COLLECTION UNTIL SUCH TIME AS THE MICROFILM COPY OF THE COLLECTION "IS FULLY ACCESSIBLE IN THE UNITED STATES...."

THE INTERESTS OF THE JUSTICE DEPARTMENT'S OFFICE OF SPECIAL INVESTIGATIONS AND THE STATE DEPARTMENT'S OFFICE OF CONSULAR AFFAIRS ARE ADDRESSED IN THE AGREEMENT. DURING THIS "INTERIM PERIOD," THE AGREEMENT STATES THAT U.S. GOVERNMENT OFFICIALS WILL BE PROVIDED ACCESS TO THE BDC COLLECTION "TO THE SAME EXTENT AS NOW ENJOYED BY THESE AUTHORITIES." AFTER THE TRANSFER, THE AGREEMENT STATES THAT U.S. GOVERNMENT OFFICIALS SHALL HAVE ACCESS TO THE DOCUMENTS "WHENEVER NECESSARY" AND THAT REQUESTS FOR ORIGINAL DOCUMENTS WILL BE "EXPEDITIOUSLY TRANSFERRED" TO REQUESTING AMERICAN AUTHORITIES.

ACCESS TO THE BDC COLLECTION FOR SCHOLARS AND NAZI WAR CRIMINAL INVESTIGATORS AND RESEARCHERS, HOWEVER, IS LEFT ENTIRELY TO "THE RULES OF THE RESPECTIVE ARCHIVES." THE NEW YORKER ARTICLE DESCRIBES GERMAN LAWS WHICH REPORTEDLY RESTRICT ACCESS TO THAT NATION'S FEDERAL ARCHIVES, MAKING ACCESS TO A PERSONNEL FILE, FOR EXAMPLE, IMPOSSIBLE UNTIL THE INDIVIDUAL HAS BEEN DEAD FOR THIRTY YEARS -- WITH DISCRETION VESTED IN THE ARCHIVIST TO WITHHOLD ACCESS TO THE RECORD FOR AN ADDITIONAL THIRTY YEARS IF IT IS "IN THE PUBLIC INTEREST."

IT IS THE COMBINATION OF RESTRICTIVE GERMAN PRIVACY LAWS COUPLED WITH CONSIDERABLE DISCRETION VESTED IN THE GERMAN ARCHIVISTS WHICH MAKES SCHOLARS AND RESEARCHERS MOST APPREHENSIVE ABOUT THE FUTURE TRUSTEES OF THE BDC. WHILE GERMANY HAS MADE GREAT STRIDES IN COMING TO GRIPS WITH ITS ROLE IN THE HOLOCAUST, IT IS NOT AT ALL CERTAIN THAT THE BUREAUCRACY WILL HAVE THE SAME COMMITMENT TO ENSURING REMEMBRANCE OF THE PAST AS WE DO.

IN ADDITION, THE TRANSFER AGREEMENT IS SILENT ON THE POSSIBILITY OF REORGANIZATION OF THE COLLECTION, DISPERSAL OF THE DOCUMENTS, OR EVEN DESTRUCTION OF CERTAIN FILES. A SEPARATE "VERBAL NOTE" ACCOMPANYING THE AGREEMENT PROVIDES INSUFFICIENT ASSURANCES, STATING MERELY THAT THE COLLECTION WILL NOT BE MOVED "ABSENT PRIOR CONSULTATION."

THE MAN WHO WILL APPARENTLY BECOME THE GERMAN DIRECTOR OF THE BDC HAS BEEN QUOTED AS HAVING SAID "I WILL SOMETIMES HAVE TO REJECT ACCESS TO ORIGINAL DOCUMENTS.... IF A RESEARCHER IS INTERESTED IN A SERIOUS TREATMENT OF THE PAST, THEN THAT IS FINE....IF SOMEONE IS INTERESTED ONLY IN FINDING OUT WHETHER A POLITICIAN WAS A PARTY MEMBER, THEN THAT IS NOT HISTORICALLY USEFUL."

IF TRUE, THIS STATEMENT RAISES SERIOUS CONCERNS. HISTORY IS AS CREDIBLE AS THOSE WHO WRITE IT -- AND THESE STATEMENTS CAST DOUBTS ABOUT WHETHER RESEARCHERS WILL HAVE ACCESS TO THE ORIGINAL DOCUMENTS UNTIL SUCH TIME AS A USER'S COPY IS AVAILABLE IN THE UNITED STATES -- A PERIOD WHICH COULD BE AS LONG AS TWO YEARS, ACCORDING TO SOME REPORTS.

ALMOST 50 YEARS AFTER THE SECOND WORLD WAR, A SMALL GROUP OF ANTI-SEMITES CONTINUES TO MOURN THE DEFEAT OF HITLER. INCREASINGLY SEPARATED BY TIME FROM THE EVENTS OF NAZI GERMANY, NEW GENERATIONS FACE AN ERA OF POTENTIAL IGNORANCE, COMPLACENCY, AND INSENSITIVITY THAT A GROWING NUMBER OF HOLOCAUST DENIAL PROPAGANDISTS SEEK TO EXPLOIT. AS SURVIVORS AND AMERICAN LIBERATORS PASS FROM THE SCENE, MEASURES TO PRESERVE THE MEMORY OF HITLER'S VICTIMS -- AND TO TEACH THE HORRIBLE LESSONS OF INTOLERANCE -- HAVE TAKEN ON NEW IMPORTANCE. ACCESS TO THE IRREPLACEABLE HISTORICAL RECORDS MAINTAINED IN THE BDC, THEREFORE, IS MORE CRITICAL THAN EVER.

WE WILL NEVER FORGET WHAT WAS LOST TO US AND TO THE WORLD -- GRANDPARENTS, CHILDREN, BROTHERS AND SISTERS, PARENTS, FRIENDS. THE SIX MILLION JEWS WHO WERE KILLED STILL SPEAK TO US IN FADING

PHOTOGRAPHS, IN DUSTY LETTERS, AND IN OUR PERSONAL RECOLLECTIONS.

THE RECORDS DOCUMENTING THE ACTIVITIES AND BACKGROUNDS OF THE PERPETRATORS MUST ALSO BE SAFEGUARDED. AN UNDERSTANDING OF THE PAST IS CRUCIAL TO COMPREHENDING ITS CONSEQUENCES IN THE PRESENT AND AVOIDING ITS TRAGEDIES IN THE FUTURE. IF WE DO NOT LEARN FROM THE PAST THEN "NEVER AGAIN" IS AN EMPTY PROMISE.

IN SUM, OUR PREFERENCE WOULD HAVE BEEN FOR THE U.S. TO MAINTAIN CONTROL OVER THE BDC UNTIL A COMPLETED USER'S COPY OF THE DOCUMENTS WAS AVAILABLE IN THIS COUNTRY. SHORT OF THAT, WE BELIEVE THE UNITED STATES SHOULD NOW OBTAIN GREATER ASSURANCES FROM THE GERMAN GOVERNMENT TO ENSURE THAT ALL WHO CURRENTLY HAVE ACCESS TO THE COLLECTIONS WILL CONTINUE TO HAVE ACCESS TO THEM AFTER THE TRANSFER AGREEMENT TAKES EFFECT -- AND THAT THESE FILES WILL NOT BE REORGANIZED, DISPERSED, OR DESTROYED WITHOUT APPROVAL OF AMERICAN AUTHORITIES.

AS AN ONGOING MATTER, WE RECOMMEND THAT THE UNITED STATES ESTABLISH A JOINT BDC COMMISSION WITH GERMAN OFFICIALS TO EVALUATE THE OPERATIONS OF THE CENTER AFTER THE TRANSFER AND, IF NECESSARY, TO HANDLE COMPLAINTS ABOUT ACCESS. ON THE AMERICAN SIDE, THIS COMMISSION COULD BE COMPOSED OF STATE DEPARTMENT AND JUSTICE DEPARTMENT OFFICIALS, AS WELL AS SCHOLARS IN THE FIELD. WE ALSO URGE CONGRESS TO CONTINUE TO MAINTAIN AN ACTIVE OVERSIGHT INTEREST IN THE OPERATIONS OF THE BDC AND IN ISSUES OF ACCESS TO ITS UNIQUE COLLECTIONS.

JESS N. HORDES

Jess N. Hordes is the director of the Washington office of the Anti-Defamation League.

The Washington office is ADL's liaison with the White House, Congress, other federal government officials and agencies, foreign embassies and national organizations headquartered in the nation's capital.

Dr. Hordes, a native of New York City, received his M.A. and Ph.D. in International Relations from the Johns Hopkins School of Advanced International Studies. His doctoral dissertation analyzed the role of the United Nations in the Arab-Israeli conflict. Dr. Hordes holds a B.A., cum laude, from Yeshiva University.

Before joining ADL in 1982, he served for seven years as executive director of the Washington-based Research Project on Energy and Economic Policy. In that position he acted as a consultant to ADL and other Jewish organizations on Arab investments in the U.S., energy matters and played a heavy coordinating role in developing legislative strategy leading to enactment, in 1977, of toughened new U.S. anti-boycott statutes.

Active in Washington Jewish community affairs, Dr. Hordes served as a member of United Jewish Appeal Federation Budget and Planning Education Committee and on the boards of the Hebrew Academy, the Yeshiva High School and Woodside Synagogue. He is married to Naomi Wasserman Hordes, an artist who specializes in Jewish papercuts. The Hordes' have two children, Adina and Ami.

Statement of Robert Wolfe
a private citizen knowledgeable through personal experience and
research on the history of the Berlin Document Center
to the Foreign Relations Subcommittee on International Security,
International Organizations, and Human Rights
United States House of Representatives, April 28, 1994

I offer this statement as a private citizen, who is perhaps the most knowledgeable living person about the history of the Berlin Document Center (BDC). My statement is based partly on research in primary sources and partly on personal involvement.

I am not testifying on behalf of the National Archives, where I have been employed as specialist for Captured German records since 1962, nor for the State Department, which I have served as archival advisor for the BDC since 1968. Nor do I represent the United States Holocaust Museum, which I have served as a special adviser to Eli Wiesel and a member of its archival committee since its inception. What I can uniquely provide is an institutional memory, having served as a United States representative in unofficial and official negotiations with the Germans about the BDC since 1969.

These hearings are patently the result of reactions to an article by Gerald Posner, "Secrets of the Files," in "Letter from Berlin" in *The New Yorker* of March 14, 1994. That article consists mainly of uninformed opinion and little fact. Not only was I interviewed at length by Dr. Posner, a longtime research customer, but on the recommendation of the Central European desk of the State Department, I also furnished that information to a *New Yorker* fact-checker in my capacity of "longtime archival adviser for the State Department." These facts were nevertheless ignored in the published article, probably because they are much less in vogue than uninformed complaints.

In August 1947, the Director of Intelligence of the U.S. Office of Military Government (OMGUS) established a Committee on Disposition of Nazi Documents and Related Materials to "submit recommendations as to the future use and disposal of the documents" in the Berlin Document Center. During the ensuing eleven months, the committee held twenty-five meetings, and reported on July 1, 1948 with specific recommendations on ninety-two "collections" of documents roughly corresponding in most cases to archival record groups or series based on the principle of provenance.

Since, in the event, the committee's recommendations have been for the most part ignored, altered, or delayed during the intervening 46 years, there is little benefit in describing here its proposals for disposition of specific records collections. For today's hearing, however, some of its general recommendations may be of interest:

a German Documents Center be inaugurated as the trustee for documents to be returned to appropriate German institutions not yet reconstituted (e.g., Ministry of Education); . . . especial care to be taken to transfer . . . [historically valuable] collections intact and to guarantee . . . their future integrity; all files relating to personalities be placed in the custody of the same agency, so as to afford maximum utilization with maximum ease; . . . all records containing names and personal data which are retained for historical purposes be made available with the proviso that in published reports individuals shall not be identified or identifiable [underlining mine]."

These two recommendations resemble the basic, if incompatible, justifications for the retention of the so-called Biographical Collections, and the continued existence of the Berlin Document Center !

By the end of 1952, final agreement was attained on a Statement of Policy Regarding the Return of Seized German Documents containing the following provisions:

to promote friendly relations with the Federal Republic on a normal basis, to bring about effective participation by the Federal Republic in the European Defense Community on a basis of equality, . . . the seized German documents will be returned . . . subject only to . . . the following categories of material which may be retained: . . . (c) Documents tending to glorify the Nazi regime or which are of inherent propaganda character, or which deal with the organization, personnel, and operation of Nazi Party institutions, except where such transfer would not jeopardize the democratic way of life in the FRG . . . In appropriate cases, subject to overriding political and military considerations, seized documents which would normally be returned may be retained temporarily for the purposes of official research . . . All materials which are uniquely a part of the German cultural heritage will, subject to provisions . . . preceding, be returned to the FRG at an early date.

Although this policy statement was as much concerned with captured German records held in Alexandria or elsewhere in the United States as in the BDC, the specific reference to records dealing with the "organization, personnel and operations of Nazi Party institutions" obviously had the most direct impact on the BDC. Consequently, the US Army in Europe, wearying of the burden and expense of operating the BDC, and now alarmed at the prospect of bearing it indefinitely, proposed to the Department of State by letter of March 16, 1953 that the BDC records "be transferred to HICOG immediately, collections of no further interest to the Department of State and which the Department of the Army desire to safeguard be shipped to the Kansas City Records Center."

On August 1, 1953 the Joint Congressional Committee on the Disposition of Executive Papers approved a General Records Schedule for Seized German Records which authorized disposal by "donating them to the Federal Republic of Germany." The precise citation of the statute requiring return of captured German records is: Job No. 11-NNA-777, General Records Schedule, Seized German Records, July 29, 1953, approved by the Joint Committee on the Disposition of Executive Papers on August 1, 1953, 83 Congress, 1st Session, HR Report No. 1077: Disposition of Sundry Papers. On page 42 of the *New Yorker* article, this clear directive is discounted to "Germany cited a United States congressional provision, in effect since the late 1940's."

Three months later, on October 1, 1953, control of the Berlin Document Center was transferred to the Berlin Mission of the U.S. Department of State. Although most of the BDC collections dealt with the "organization, personnel and operation of Nazi Party institutions," and thus fell into the "categories of materials which may be retained," the non-biographic collections were eventually included in the implementation of the return policy which commenced after the Federal German Republic acquired full sovereignty in 1955.

Between 1959 and 1962, the non-biographic record collection in the BDC, those of Nazi Party provenance as well as Reich agencies, were turned over to the Bundesarchiv in Koblenz after extensive microfilming. While this enabled the Bundesarchiv to incorporate much of the BDC non-biographic records into related materials already in its holdings, particularly those returned from Alexandria, in many instances it also entailed the disadvantage of separating personnel or person-related records from related administrative records of the same provenances.

Since 1962, the BDC has contained only so-called biographic collections consisting of personnel and person-related records. The 1960's brought a mounting interest among private scholars desiring to exploit the biographic collections, in some cases for quantitative studies. For a staff experienced chiefly in checking names for official purposes such as war crimes prosecution, denazification, or pension claims, to provide reference service for institutional histories, historical events, and subject areas was an unfamiliar burden. To the scholars' applications were soon added inquiries from the new breed of investigative reporters, often interested in documenting the activities during the Third Reich of politicians and other persons who had attained prominence in postwar Germany. By 1968, the hitherto obscure BDC had become a subject of public discussion.

In that year, a member of the *Bundestag* demanded transfer of the BDC because the West German voting public was entitled to access to the records of former Nazis in high positions. Conservatives in the *Bundestag* and elsewhere objected that this would revive

denazification. Return of the BDC biographic records had already come under renewed consideration during 1967, and in late 1968 the Berlin Mission suggested to its parent State Department that the BDC, building and records, be transferred to the German government. Learning of this, American researchers and organizations seeking documentation on the Third Reich and the Holocaust became alarmed at the prospect of return of the BDC without further microfilming (three series had already been filmed).

With these conflicting pressures from Germany and abroad, in 1968 the Berlin Mission sought archival advice on the operation of the BDC and on preparations for transfer. At the request of the State Department Historical Office, the Archivist of the United States named me archival consultant to the BDC, and designated me to attend the December 1968 annual meeting of the Conference on Central European History of the American Historical Association to assure the interested scholars gathered there that any records I deemed to be historically valuable would be filmed before return to the West German Government. My standing with my former academic colleagues sufficed to allay their concerns.

During visits in 1969 and 1970, I counseled the German section heads of the BDC on archival reference service and on the preparation of finding aids to the biographic collections being microfilmed for the National Archives, and assessed the research value of the collections to determine which warranted microfilming. While microfilming proceeded during the 1970's, informal contacts continued between the U.S. and Federal German governments seeking agreement as to the processes and timing for the transfer of the BDC. Formal negotiations in Berlin in 1979, and in Washington in 1980, brought agreement that microfilming for deposit in the National Archives should be completed before transfer of the BDC records and buildings, and that parallel access to the original paper records transferred to Federal German custody and to the microfilm thereof deposited in the National Archives would be on a similar basis: the right of personal privacy (which by Federal German law does not protect criminal or public political activity during the era of the Third Reich) will be balanced against the public right and need to know, consistent with the archival laws of each country.

There have been complaints, referred to in the Posner article, that the *Bundesarchiv* plans to "re-integrate" the Berlin biographic "collections" with non-biographic collections formerly held by the BDC until 1962, and with other pertinent records in *Bundesarchiv* hands. This is, in my opinion, a proper archival approach. It is made palatable for NARA by the German archivists' promise to maintain a concordance with our microfilm as they have done in the past. For example, the *Bundesarchiv* furnished an Australian court preparing a war crimes indictment with concordances with the Alexandria Guides, showing *Bundesarchiv* re-

arrangement of captured records returned by the U.S. This was invaluable for preparing my pretrial testimony in Adelaide, and amply proves the efficacy of such concordances as well as the *bona fides* of the *Bundesarchiv*.

The *New Yorker* article also contains complaints from future American users of the BDC biographic microfilm who are fearful that they will have to wait two years while NARA processes the BDC microfilm. My suggested remedy for that concern has been provided directly and internally to NARA management. I have no authorization to discuss it here.

The unwarranted complaints printed in and generated by the *New Yorker* article cannot justify a State Department approach to the German Government for a postponement of transfer, which would be hazardous as both diplomacy and politics. The U.S.-German bipartite agreement, in my opinion provides remedies for all these complaints. If the State Department wants further assurances that these remedies are acceptable, this should be confirmed privately; any attempt at postponement, at this late date, and after all these years, could scarcely avoid international public acrimony.

No archivist in the world seeking to serve his government and the public in an open democratic society can be comfortable without knowledge of the universe of surviving permanently valuable records. The division of Germany, the dispersal of its records, and Allied removal of individual documents for intelligence and war crimes prosecution purposes have tainted the integrity of these documents. If future German generations are to accept the truth of the Nazi regime and the Holocaust, the availability of the documents in their own archives, and the direct access thereto of their own scholars is imperative.

The German federal archivists have been cooperative and forbearing. They, too, would have preferred to be exempt from *Datenschutz* (literally, protection of data) as the National Archives was lucky to be exempt from most provisions of the Privacy Act in return for application and publication of privacy regulations for its accessioned records. After such an excellent and cooperative relationship, it is both unfair and unwise to offend the German archivists now when they have recently taken possession of the other half of the Third Reich records long-suppressed or manipulated in the former East Germany or the Soviet Union. Why jeopardize the informal discussions underway among several Washington institutions, public and private, not including NARA, for financing microfilming of that other half, when we are entirely dependent on the goodwill of the *Bundesarchiv* for eventual access to that long withheld half?

When the last element of the near-50 year Four-Power occupation of Germany ends, when no American troops are in Berlin, how do we propose legally and practically to keep the BDC and its records ? Or do we propose to remove the tons of original paper records in the baggage trains of our withdrawing forces ? Continuing use of the original paper records would eventually destroy them, so the *Bundesarchiv* will confine researchers to its copy of the microfilm, examining or refilming the original paper documents only when the microfilm does not suffice. By the BDC transfer agreement, the National Archives will have exactly the same access.

Robert Wolfe

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Alexandria, VA 22302

STATEMENT OF GERALD POSNER
REGARDING THE EFFECTS OF THE TRANSFER
OF THE BERLIN DOCUMENT CENTER
FROM UNITED STATE CUSTODY AND CONTROL
TO THE FEDERAL REPUBLIC OF GERMANY
BEFORE
THE COMMITTEE ON FOREIGN AFFAIRS

APRIL 28, 1994

Mr. Chairman, Members of the Committee, I am pleased to have the opportunity to submit a statement regarding my research and investigation into the issues pertaining to the scheduled July 1994 transfer of the Berlin Document Center (BDC), the world's largest repository of captured Nazi war records, to the custody of the Federal Republic of Germany. I hope that my impressions may assist the Committee in determining which issues in the pending transfer are the most deserving of immediate attention and action.

I submit this statement both as an attorney and investigative reporter who is completely familiar with the issues about the BDC and its pending transfer. On March 14, 1994, *The New Yorker* magazine, in an article titled *Secrets of the Files*, published the result of my research over the past four years into the BDC. This included personal visits to the BDC, interviews with numerous individuals involved in its administration or as users of its documents, including historians, government employees, and private researchers. Besides the American archivists who are setting the rules for access to the microfilm copy of the BDC's files at the National Archives, I am the first journalist to interview the German archivists who will assume control of the BDC after the July transfer. I have obtained their express plans of how they intend to direct the BDC and its files.

~~During my research, several troubling issues were brought to my~~
 attention by researchers and historians that had used the center over the past
 four decades. Chief among them was concern about continuing and full access
 to the information contained in the BDC files, especially during an interim
 period when the originals would be returned to German custody and a
 complete users set of the microfilm, some 40,000 rolls of film, would not be
 available for a minimum of two years (in my conversations with National
 Archives representatives, I was expressly told that the two years was both an
 optimistic estimate). Moreover, while the National Archives intends to make
 rolls available as copying is finished (a policy announced only after my article
 was published), historians and private researchers suggest that will be of
 limited usefulness. Only when a complete users set is finished can researchers
 cross-reference the entire BDC data bank. Moreover, only after a complete
 users set is available will it be possible for historians and scholars to examine
 the film and determine whether it is a competent set. Since questions about the
 quality of the copying process have been raised by some historians, and the
 BDC and archives have failed to consult on a continuing basis with many
 experts in this field, there is concern about the overall quality of the microfilm
 copy which Washington has agreed to take under the terms of the agreement

signed with Federal Republic of Germany.

However, assuming for the sake of argument, that the microfilm copy is of excellent quality, the question of the time lag between returning the originals to Germany, and having a complete set at the Archives, is still paramount. This issue has assumed additional importance since the German officials who will be responsible for the BDC after its transfer have indicated to me that their understanding of access to the originals is more restrictive than the current BDC policy. The 1988 German law (the Bundesarchivgesetz), controlling access to their archives, is quite restrictive by American archival standards.

In U.S. archives, all privacy considerations end upon the death of a person. Exceptions allowing early access will sometimes be made, even if the person is alive, if he or she has been convicted of a war crime. Under the Bundesarchivgesetz, the issue of a war crimes conviction is irrelevant. Usually, files are closed until a person is dead a minimum of thirty years. The law allows the archivist to extend that protection for an additional thirty years "in so far as this is in the public interest." If the death of the person cannot be established, the law closes the file for 110 years from its creation. Except those war criminals executed immediately after the war, this means that the vast

majority of Nazi personnel files would be off limits. Medical information is closed for eighty years from the date of the document's preparation. The law also allows an archivist to completely withhold a document for any of the following: if its use "jeopardized" the welfare of Germany, was at odds with the "legitimate concerns of third persons," threatened the preservation of the original document, caused administrative work "which could not be justified," or impinged on any German secrecy laws.

The level of discretion granted to the German archivist is tremendous. Dieter Krüger, the German archivist who will take direct command of the BDC, told me, "I am bound by the law and must protect the privacy of the person for thirty years after his death. I will sometimes have to reject access to original documents." Dr. Krüger also provided some examples of how he might apply privacy restrictions. "If a researcher is interested in a serious treatment of the past," he says, "then that is fine. But if someone is only interested in finding out if a politician was a party member, then that is not historically useful. On the other hand, if someone signed an order to do something, like an execution order, that would not be protected. But if the question involves a Volksgerichtshof (Nazi judicial proceeding) case, then I might have problems. Maybe the person who filed the complaint is unreliable,

and if I believe that, to release the information might affect the accused man or his family. Another instance would be the case of those people who were condemned to death by the Nazi courts. They often wrote letters to their families, before their execution, but the letters were never sent to the families, but instead kept in the files of the condemned. If someone wanted to publish those letters, maybe one of them says, 'Oh, Elizabeth didn't do anything to help me.' Well, maybe Elizabeth is still alive. That would be of concern."

Dr. Krüger is adamant that he "does not want to be a bottleneck for serious research," and "wants people to get access, as it is not my ideal to always hold back the information." He acknowledges, however, that any American researcher who requests access to the originals "must demonstrate in the future why the microfilm is not adequate for his purposes," and that "if there is not a serious need for the original, then they should use the microfilm."

The problem, of course, is that there will not be a complete set of microfilm at the National Archives for some time.

What makes this such a frustrating matter is that the various U.S. negotiators who worked on the transfer agreement with Germany were aware that this was an important issue. One negotiator, who asked to remain anonymous, told me that this very issue had been raised in the negotiations,

and that Germany had been asked repeatedly to delay the transfer of the originals documents until a complete users set of the microfilm was ready in Washington. But the Germans balked precisely because they could not obtain a guarantee from the Americans about how long it might take the National Archives to produce a full users set. As a result, the U.S. negotiators abandoned the issue and allowed the transfer of the original to take place without proper safeguards for private historians, scholars, researchers, and Nazi hunters. Only the Justice Department protected itself with an express clause built into the transfer agreement guaranteeing access to the originals, notwithstanding German laws.

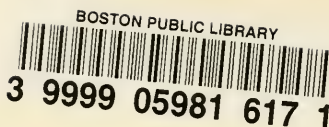
It is a shame that such a simple clause for private researchers and scholars was not placed into the transfer agreement. For those involved in important projects, the difficulties with access to the BDC files could create delays at a minimum, or completely halt productive investigations in other cases.

I hope that this Committee has the resolve to show its strong displeasure that a simple safeguard guaranteeing continuing access to the BDC files was not included in the transfer agreement. Moreover, with due deference to the German government, I urge this Committee to ask the government of the

Federal Republic of Germany to consider a unilateral concession to the concerns I have heard from so many private users of the BDC - i.e., that Germany shall either delay taking the physical custody of the BDC until a complete users set of the documents is available in Washington, and certified by an independent panel of historians to be a good set, or in the alternative, Germany shall take possession of the BDC and its files in July, but shall maintain the originals under the same access rules under which they existed at the BDC for some four decades, until a full users set is available in Washington. After the users set of microfilm is available in Washington, Germany could then maintain the files under their own archival laws.

This Committee can serve both the causes of historical research, as well as the final stages of the investigations into Nazi war crimes, to fashion an outcome that will guarantee the broadest possible access to the Nazi files of the BDC, and to insure that such access is uninterrupted.

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DISEASES OF THE SKIN

April 25, 1994

The Honorable Tom Lantos
Chairman
Sub-Committee on International Security,
Terrorists Activities and Human Rights
B-358 RHOB
Washington, DC 20515

Dear Congressman Lantos,

I write to share with you my concerns over the transfer of the Berlin Document Center from jurisdiction of the United States Army to the Federal Republic of Germany.

As a medical historian engaged in the presentation, nationwide, of courses on "Nazism and German Medicine", I am vitally concerned about the potential loss of a very important resource center.

I and my colleagues who are dealing with the period 1933 to 1945, with specific reference to the relationship of organized German medicine to the Nazi regime, have found the Berlin Document Center to be of inestimable help in our pursuit of historical rectitude.

It is my judgement that there is a potential risk of the loss of the ability of this center to be an important resource center under the proposed transfer agreement.

Microfilming of the records is an important activity but in historical research sometimes looking at the original documentation can lead you to other evidence in a Sherlock Holmes-type technique which is very difficult to explain to anyone who is not engaged in this kind of work.

For this reason, I would like to be assured that whatever agreement is reached that bonafide medical historians from anywhere in the world will always be permitted to have access to the original documents that should be kept in one specific center.

Thank you in advance for your interest in this matter.

Sincerely,

Michael J. Franzblau, M.D.

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AND
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Dr. Michael J. Franzblau
Dr. Thomas A. Raffin
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Investigate Nazi Ties Of German Doctor

IN JANUARY 1993, the board of directors of the American Medical Association became aware that the then president-elect of the World Medical Association, Dr. Hans Joachim Sewering, had been a member of the Nazi Party, a member of the dread SS, and had apparently participated in a program of euthanasia.

Sewering's signature was on a 1943 transfer order sending an epileptic child, Babette Fromm, from Schoenbrunn Sanatorium to the notorious Elfling-Haar "Healing Center," where euthanasia experiments allegedly occurred. Three weeks later, Babette died.

After vigorous protest by the American Medical Association on January 6, which was reported in U.S. newspapers, Sewering resigned, claiming a "world Jewish conspiracy" against him. He said he was stepping down in the interest of the world organization.

Dr. Karsten Vilmar, the president of the German Medical Association and Sewering's nominator to the position of president-elect, publicly accepted Sewering's explanation and expressed regret that he was resigning. Two days after the resignation, the nuns at the Schoenbrunn Sanatorium issued a statement that everyone at the institution knew the transfer to Elfling-Haar was a ticket to death and that over 900 children had been transferred there.

The nuns said they had broken a silence of 50 years because, after Dr. Sewering stated that he had no knowledge of any killing at Elfling-Haar, the bishop of Munich urged them to speak out.

In April, at a closed meeting of the World Medical Association Council in Istanbul, American delegates proposed a by-law resolution that would require any nominee for office in the World Medical Association to be beyond ethical reproach.

At that meeting, the World Medical Association Council, by a vote of 7 to 4, elected Dr. Vilmar treasurer over the vigorous opposition of the American, Australian and Canadian medical associations. Vilmar "explained" to the AMA during this meeting that the charges against Sewering were "old hat"; that Sewering had served the German and World Medical associations with distinction; and that Sewering had been exonerated by a de-Nazification court in 1946.

The AMA delegation rebutted each of these assertions. Dr. Sewering was not exonerated. While records show that the 1946 trial did not take up his alleged participation in the euthanasia project, since none of the activities were known to the court, Sewering was convicted by the de-Nazification

court of being a member of the Nazi Party and the SS and was fined 1,500 German marks.

Because the German Medical Association did not reject Sewering's allegation of a "world Jewish conspiracy" nor his statement that he lacked knowledge of the killing taking place at Elfling-Haar or other sanatoria in Germany from 1941 to 1946, I proposed a new resolution for the World Medical Association General Assembly in Budapest last October.

The resolution asked for an investigation into Sewering's nomination and demanded that Vilmar resign as the World Medical Association treasurer. There was a spirited debate but no support for my resolution.

Representatives of the German Medical Association met with me personally during the meeting and made every effort to discourage me from my attempt to get Dr. Vilmar to resign. Since then, a correspondence has begun with the intention of showing that my interpretation of the events is wrong. However, nothing they have sent has changed my mind.

The German Medical Association has, as recently as May, reaffirmed its support for Sewering, who has been made an honorary member of its board of trustees. It is my suggestion that, in order to clear the air, the German Medical Association ask the prosecutor in Munich to investigate the activities at the Schoenbrunn Sanatorium and Elfling-Haar "Healing Center" in 1943.

This investigation should include subpoenas of all records from both institutions and statements under oath by Dr. Sewering and others, including the nuns who may have knowledge about these activities in 1943. It is my contention that there may be enough evidence for a more serious doctors' war crimes trial.

I also plan to introduce a resolution to the AMA House of Delegates in June asking for withdrawal of the AMA from the World Medical Association unless Vilmar resigns. The AMA contributes about \$200,000 to the World Medical Association's annual budget of approximately \$900,000. This is a significant contribution to an organization that was created on the ashes of the Nuremberg trials to raise the ethical standards of physicians throughout the world.

The presence of Vilmar as treasurer and the stance of the German Medical Association makes a mockery of the ideals on which the world group was founded.

Michael Franzblau is a practicing dermatologist in Miami County. He is a member of the American Medical Association and an associate of the World Medical Association.

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